# Jurisdictional Statement

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ALEXANDER L. STEVAS,

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1981

EXCHANGE OIL AND GAS CORPORATION, et al.,
Appellants,

versus

RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama,
Appellee.

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ON APPEAL FROM THE SUPREME COURT OF THE STATE OF ALABAMA

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## JURISDICTIONAL STATEMENT

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Section A

*Questions Presented on Appeal*

1. Whether that portion of 1979 Alabama Acts, No. 434, which prohibits producers from passing on the cost of the Alabama severance tax to consumers, violates the Supremacy Clause of the United States Constitution by attempting to regulate pricing of oil and gas production, a field which has been pre-empted by federal statute (i. e., the Natural Gas Act, 15 U.S.C. §717, et seq., the Natural Gas Policy Act 15 U.S. C. §3301 et seq., and the Emergency Petroleum Allocation Act, 15 U.S.C. §751, et seq.), in light of this Court's holding in *Maryland v. Louisiana*, _____ U.S. _____, 101 S. Ct. _____, 68 L. Ed. 2d 576 (1981) [1].

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1/ Substantially the same question was presented in *Mobil Oil Corp. v. Tully*, 499 F. Supp. 888 (N.D.N.Y. 1980), aff'd in part, 653 F.2d 497 (Temp. Emer. Ct. App. 1981), U.S. appeal docketed, No. 81-96.

2. Whether that portion of 1979 Alabama Acts, No. 79-434, which requires Appellants' bear 100% of the 2% tax increase imposed by the Act unconstitutionally impairs Appellants' contracts because: (1) Appellants oil and gas leases with landowners and royalty owners require that the landowners and royalty owners bear their pro-rata share of taxes on oil and gas production; and (2) Appellants' contracts with interstate and intrastate pipeline purchasers require that the purchasers reimburse Appellants for all or part of any severance tax.

3. Whether that portion of 1979 Alabama Acts, No. 79-434, which levies a tax on all oil and gas produced or severed, including the royalty interest, but exempts royalty owners from payment of the tax (thus requiring non royalty owners to bear the entire 2% tax increase, including that portion levied on the royalty interest) violates the Equal Protection Clause of the Fourteenth Amendment.

4. Whether the Supreme Court of Alabama, in departing from its own settled rules of evidence and procedure, violated Appellants' rights to Due Process of law by:

(1) Refusing to consider the admissible and uncontradicted evidence which established beyond any doubt the true legislative intent that the 2% tax increase levied by Act No. 434 was restricted geographically to wells in only one county, as the trial court found, and not to all wells within the state, as the Supreme Court of Alabama held;

(2) Rendering an arbitrary and capricious interpretation of Act 434 which is without support in the record; and

(3) Effectively denying Appellants a hearing on the uncontested evidence relative to legislative history.

## Section B.

***List of All Parties to the Proceeding in the Court whose Judgment is Sought to be Reviewed.***

Exchange Oil and Gas Corp.; Getty Oil Co.; Placid Oil Co.: Union Oil Co. of California; Terra Resources, Inc.: Petroleum Corp. of Texas; Exxon Corp.; Gulf Oil Corp.; The Louisiana Land and Exploration Co.; Citmoco Services Inc.; Anderman Operating Co.; Midroc Operating Co.; Pruet Production Co.: Warrior Drilling and Engineering Co., Inc.; Alabama Gas Corp.; Ala Gasco Pipeline Co.; Southern Natural Gas Co.; Coronado Transmission Co.; Ralph P. Eagerton, Jr., as Commissioner of Revenue of the State of Alabama. [2]

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2/ **For Appellants' parent companies, subsidiaries and affiliates, see Appendix (vi).**

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(iii) (Rehearing Order)

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(v) 15 U.S.C. §§717(a)-(b), 717c; 15 U.S.C. §751; 15 U.S.C. §§ 3319-20; 1979 Ala. Acts, No. 79-434; Code of Ala. §§ 40-20-1(8), -3 (1975)

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### *Opinions Below*

The opinion of the Supreme Court of Alabama which is sought to be reviewed was entered on July 10, 1981. This opinion appears in the Official Reports for Alabama at 404 So. 2d 1 (Ala. 1981), and is included herein as Appendix (i). The opinion of the trial court, the Circuit Court of Montgomery County, Alabama, does not appear in any official or unofficial report but is included herein as Appendix (ii).

## Section F.

***Statement of Grounds on which Jurisdiction of this Court is Invoked***

Appellants obtained a declaration from the Circuit Court of Montgomery County, Alabama, that 1979 Ala. Acts, No. 79-434, violated the Equal Protection, Supremacy and impairment of Contracts provisions of the U. S. Constitution. The Supreme Court of Alabama, on July 10, 1981, reversed. *Eagerton v. Exchange Oil and Gas*, 404 So. 2d 1 (Ala. 1981). A timely Petition for Rehearing was filed, and the Petition was denied on September 4, 1981. A Notice of Appeal to the U.S. Supreme Court was filed with the Supreme Court of Alabama on November 24, 1981. On November 27, 1981, this Court granted an extension of time for Appellants to docket this appeal, up to and including January 8, 1982.

The jurisdiction of the U.S. Supreme Court to review this decision by appeal is conferred by Title 28, U.S.C. §1257(2).

## Section G.

***Constitutional Provisions and Statutes involved.***

(1) "This Constitution, and the Laws of the United States which shall be made in pursuance thereof. . . shall be the supreme law of the land . . . ." U.S. Const. art. VI, cl. 2.

(2) "No state shall . . . pass any . . . law impairing the obligation of contracts . . . ." U.S. Const. art. 1, §10, cl. 1.

(3) "No state shall . . . deny to any person within its jurisdiction the equal protection

of the laws." U.S. Const. Amend. XIV., §1.

(4) The Natural Gas Act, 15 U.S.C. §717, et seq. (see Appendix (v) ).

(5) The Natural Gas Policy Act, 15 U.S.C. §3301, et seq. (see Appendix (v) ).

(6) The Emergency Petroleum Allocation Act, 15 U.S.C. §751, et seq. (see Appendix (v) ).

(7) 1979 Ala. Acts. No. 79-434 (see Appendix (v) ).

(8) Code of Ala. §§40-20-1(8), -3 (1975) (see Appendix (v) ).

(9) H. B. 909, 1980 Ala. Lee. (see Appendix (v) ).

## Section H

### Statement of the Case and Facts

Appellants are owners of oil and gas in the State of Alabama and have drilled, and now operate, producing wells, the production from which is owned jointly with other lessees and royalty owners. Appellee is the Commissioner of Revenue for the State of Alabama, who is responsible for collection of the Alabama Severance Tax on all oil or gas severed or extracted from the earth. See Code of Ala. §40-20-1 et seq. (1975).

The Alabama Severance Tax Article defines a "producer" as any person, including a royalty owner, who owns oil or gas produced from wells within the State. Code of Ala. §40-20-1 (8) (1975). The Alabama statutes mandate that the tax "is levied. . . in the proportion of [the producer's] ownership at the time of severance . . . ." Code of Ala. §40-20-3(a) (1975). Furthermore, the "person[s] in charge of production operations" (i. e., operators of oil and gas wells such as Appellants) are "empowered and required to deduct", from the sale proceeds, the "proportionate amount of the tax" due from the other owners of production (i. e., nonoperating owners such as royalty interest holders). *Id.*

On September 1, 1979, the Severance Tax Article of the Alabama Code was amended by Act No. 79-434 (hereinafter "Act 434"). Act 434 made the following changes, among others, in the applicable severance taxes:

(a) It increased the tax rate of 4%, based on the value of production, by 2%, for a total of 6%;

(b) It provided that the additional 2% tax increase should be "absorbed and paid" by "producers" and prohibited such "producers" from passing "on the cost of such tax payments, either directly or indirectly to the consumer";

(c) It taxed all oil or gas production within the state, including that portion of production known as the royalty interest, but it exempted royalty owners from the 2% tax increase;

(d) It limited the application of the 2% tax increase (but not the 4% portion of the tax) to wells producing from the geographical formation known as "Smackover" between the depths of 15,000 to 15,800 feet. See 1979 Ala. Acts, No. 79-434 (Appendix (v) ).

Appellants paid the 4% portion of the tax imposed by Act 434 without protest, but paid the 2% increase under protest. Appellants then filed suit in the Circuit Court of Montgomery County, Alabama, for a refund and a declaration that Act 434 was unconstitutional in the following respects: (1) The provision that required producers to absorb the additional tax increase (hereinafter "pass-through prohibition") violated the Supremacy Clause of the U. S. Constitution, in that Federal statutes pre-empted the field of cost and pricing of oil and gas; (2) The provision that exempted royalty owners from payment of the increase in tax (hereinafter "royalty exemption") and the pass-through prohibition were violative of the U. S. Constitutional prohibition against a state's impairing the obligation of contracts, in that the provisions abrogated Appellants' contractual agreements as to allocation of the tax burden; and (3) The royalty exemption violated the Equal Protection Clause of the Fourteenth Amendment to the U. S. Constitution, because the provision established an arbitrary classification. Appellants further sought to have Act 434 construed so to apply only to wells in Escambia County, and not statewide, in accordance with the legislative history and intent.

At trial Appellants established, among other things, that the only wells producing from the Smackover Formation at depths of 15,000 to 15,800 feet were located in Escambia

County, Alabama. Appellants offered evidence of the Act's local application in the form of: testimony by the Bill's sole sponsor, Representative Hines of Escambia County; Representative Hines' statements in committee and on the floor of both Houses to the effect that the Bill was one of local application; corroborating testimony of the committee chairman and committee members; Senate Journal entries showing that the Bill was handled as a local bill on the special order calendar; records of the Alabama Fiscal Office estimating revenues on the basis of only Escambia County production; express statements in bills subsequently introduced to amend Act 434; and other uncontroverted evidence. Thus, not only from the wording of the Act, but also from uncontroverted extrinsic evidence, the Act was not intended to apply statewide, but only to oil and gas produced from the Smackover Formation at the stated depths.

After trial, the Circuit Court held:

(1) The pass-through prohibition was unconstitutional under the Supremacy Clause of the U. S. Constitution, having been pre-empted by the federal scheme for pricing of oil and gas; (2) The pass-through prohibition unconstitutionally impaired Appellants' existing contracts with their pipeline purchasers, which require that the purchasers reimburse Appellants for severance taxes, and the royalty exemption unconstitutionally impaired Appellants' leases with royalty owners, which require the royalty owner bear his pro-rata share of taxes; (3) The royalty exemption lacked uniformity and established an arbitrary classification in violation of the Equal Protection guarantee of the 14th Amendment to the U.S. Constitution. (4) The 2% increase levied by the Act did not tax statewide production, but only taxed production from the stated formation at the stated depth. See ***Exchange Oil and Gas Corp. v. Eagerton***, [MS. June 12, 1980], Cir. Ct. of Montgomery County (Appendix (ii) ).

The Commissioner appealed the decision of the Circuit Court to the Alabama Supreme Court. The Alabama Supreme Court held: (1) The pass-through prohibition did not violate the Supremacy Clause; (2) The pass-through prohibition and royalty exemption did not unconstitutionally impair Appellants' contracts; (3) The royalty exemption did not violate the Equal Protection Clause; and (4) The 2% increase applied statewide, and not only to Escambia County, because statements of the sole sponsor, floor debate, Journal entries and other evidence offered by Appellants were inadmissible to determine legislative intent. See *Eagerton v. Exchange Oil and Gas Corp.*, 404 So. 2d 1 (1981) (Appendix (i) ).

On Petition for Rehearing, each of the foregoing issues was again presented to the Alabama Supreme Court. In addition, although this Court's opinion in *Maryland v. Louisiana*, _____ , U. S. _____ , 101 S. Ct. _____ , 68 L. Ed. 2d 576 (1981), was decided after original submission to the Alabama Supreme Court, on Petition for Rehearing, each Justice of the Court was supplied a copy of the *Maryland* opinion, and supplementary briefs were filed discussing that decision in detail. Incredibly, however, and notwithstanding the foregoing, the Supreme Court of Alabama, on September 4, 1981, denied Appellants' Petition for Rehearing. See *Eagerton v. Exchange Oil and Gas Corp.*, 404 So. 2d 1 (1981), reh. denied (Sept. 4, 1981) (Appendix (iii) ).

Hence, this appeal.

## Section I

### *The Questions are Substantial*

The opinion of the Supreme Court of Alabama is in direct conflict with this Court's opinion in *Maryland v. Louisiana*, _____ U.S. _____ , 101 S. Ct. _____ , 68 L. Ed. 2d 576 (1981). If the opinion of the Alabama Court, upholding the

pass-through prohibition, is allowed to stand, then the State of Alabama will have usurped the Federal Government's power to regulate with uniformity the pricing of oil and gas. This Court should exercise its jurisdiction in order to prevent erosion of the Federal Energy Regulatory Commission's power to establish uniform guidelines governing the distribution of the costs of oil and gas.

The Alabama Supreme Court misconstrued the case of ***Barwise v. Sheppard***, 299 U.S. 33 (1936) to hold that the state could, by taxing statute, undermine the allocation of the tax burden established by private contract. In fact, the *Barwise* case is unassailable authority that the converse is true. The Alabama Court's construction of *Barwise* stands apposite to any fair interpretation of the case, and the Alabama Supreme Court opinion must be rectified in this regard.

The Alabama Supreme Court also decided that the legislature had reasonable basis for exempting royalty owners from payment of the additional severance tax. The Court's holding was based on the incredible assumption that the royalty exemption would encourage exploration within the state. However, there is not a scintilla of evidence in the record, either express or implied, to support the assumption. Indeed common sense dictates otherwise, since the royalty interest is simply a share of production, and one molecule of oil or gas is no different from another, whether owned by the royalty owner or the other interest holders.

The Fourteenth Amendment to the United States Constitution protects against taxing statutes which are unreasonable and arbitrary. The royalty exemption is manifestly unjust, not only because common ownership of the oil and gas as between royalty owners and working interest owners establishes that they are similarly situated, but also because the statutory provision works to require that the nonexempt owners pay the royalty interest share of the tax increase in additon to their own

tax. The result reached by the Alabama Supreme Court is contrary to the spirit and intent of the Constitution, as well as cases decided by this Court prohibiting invidious discrimination and arbitrary imposition of privilege taxes.

Finally, for the Alabama Supreme Court to judicially legislate a statewide tax increase beyond the scope so clearly intended by the legislature, and in defiance of and departure from the Court's own rules of evidence and procedure, is a raw taking of property without due process of law. The stated intent of the sponsor on the floor of both Houses and in Committee, as well as his testimony before the trial court, established the well known legislative intention, which was not disputed by Appellee. The Alabama Supreme Court's action is inexplicable and violates the 14th Amendment.

*Question 1*

It is clear that the pass-through prohibition of Act 434 is violative of the Supremacy Clause, because the provision is pre-empted by federal statutes. The issue was decided in *Maryland v. Louisiana, supra*, when this Court held that provisions of a Louisiana tax law, which dictated allocation of a tax imposed on natural gas, violated the Supremacy Clause of the U.S. Constitution by interfering with federal regulation of natural gas pricing. This Court wrote:

> "The Gas Act was intended to provide the FPC [Federal Power Commission], now the FERC [Federal Energy Regulatory Commission], with authority to regulate the wholesale pricing of natural gas in the flow of interstate commerce from wellhead to delivery to consumers. . . .
>
> "*Under the present law, natural gas owners are entitled to recover from their customers all legitimate costs* associated with the production,

processing and transportation of natural gas. *See F. P. C. v. United Gas Pipeline Co.*, 386 U.S. 237, 243, (1967) *(cost of service normally normally includes proper allowance for taxes and this allowance is "obviously within the jurisdiction of the Commission"* . . . .

The effect of §1303 c [of the Louisiana Act] is to interfere with the FERC's authority to regulate the determination of the proper allocation of costs associated with the sale of natural gas to consumers. . . . The FERC normally allocates part of the processing costs between those related products and insists that the owners of liquefiable hydrocarbons bear a fair share of the expense associated with processing. . . . *By specifying that the First-Use Tax is* a processing cost *to be either borne by the pipeline or other owner* [producer] without compensation, . . . or passed on to purchasers, *Louisiana has attempted a substantial usurpation of the authority of the FECR* by dictating to the pipelines the allocation of processing costs for interstate shipment of natural gas. . . .

* * *

. . . Under the Gas Act, determining pipeline and producer costs is the task of the FERC in the first instance. . . . Even if . . . the expenses should be passed on *in toto*, this kind decision making is within the jurisdiction of the FERC; and the Louisiana statute, like the state commission's order in *Northern Natural Gas, supra*, is inconsistent with the federal scheme and must give way. At the very least,

> there is an "imminent possibility of collision," . . . *[T]he State may not trespass on the authority of the federal agency.*

*Maryland v. Louisiana*, _____ U.S. _____, _____, 101 S. Ct. _____, _____, 68 L. Ed. 2d 576, 596-99 (1981) (emphasis supplied, some citations omitted, footnotes omitted).

This Court's holding in *Maryland v. Louisiana, supra*, that the federal statutes pre-empted the entire field of pricing of natural gas echoed the decisions of two U.S. District Courts. In *Mobil Oil Corporation v. Dubno*, 492 F. Supp. 1004 (D. Conn. 1980), aff'd in part and appeal dismissed in part, 639 F. 2d 919 (2d Cir. 1981), cert . denied, _____ U. S. _____ (June 22, 1981), and *Mobil Oil Corporation v. Tully*, 499 F. Supp. 888 (N. D. N. Y. 1980) aff'd in part, 653 F. 2d 497 (Temp. Emer. Ct. App. 1981), U.S. appeal docketed, No. 81-96, the courts held New York and Connecticut pass-through prohibitions were unconstitutional, having been pre-empted by the Emergency Petroleum Allocation Act, 15 U.S.C. 751, et seq. (hereinafter "EPAA") [3]. Here, the EPAA the Natural Gas Policy Act of 1978, 15 U.S.C. 3301, et seq. (hereinafter "NGPA") and the Natural Gas Act, 15 U.S.C. §§717 et seq. (hereinafter "Gas Act"), all manifest a Congressional intent to pre-empt the field of cost and pricing of oil and gas, and the pass-through prohibition of Act 434 is an impermissible trespass on Congressional authority.

Even if the entire field of oil and gas price regulation has not been pre-empted by federal statutes, where a state regulation is inconsistent with a federal plan of regulation, the state

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3/ Act 434 was superceded on May 28, 1980, see 1980 Ala. Acts, No. 80-708, before provisions of the EPAA expired. See 15 U. S. C. §760 (g).

regulation must give way, *City of Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. 624 (1973). Indeed, the state regulation must fall if there is an "imminent possibility of collision" with the federal scheme. *Maryland v. Louisiana*, _____ U.S. _____ , _____ , 68 L. Ed. 2d 576, 599 (1981) (quoting *Northern Natural Gas Co. v. State Corporation Commission of Kansas*, 372 U.S. 84, 92 (1963) ). Since price regulation by federal authorities is authorized by the Gas Act, the NGPA and the EPAA, the pricing regulation imposed by the Alabama pass-through prohibition unconstitutionally presents actual, or possible, conflict with federal authority, and the pass-through prohibition must fail. See *Id.*; *Mobil Oil v. Tully*, 653 F.2d 497, 502 (Temp. Emer. Ct. App. 1981), U.S. appeal docketed, No. 81-96.

*Question II*

The royalty exemption and the pass-through prohibition unconstitutionally impair Appellants' pre-existing contracts. Appellants' oil, gas and mineral leases require the royalty owner to pay his proportionate share of all severance taxes on production. *Exchange Oil and Gas Corp. v. Eagerton*, [MS. June 12, 1980], Cir. Ct. of Montgomery County (Appendix (ii), p. 13). Additionally, contracts with interstate pipeline wholesalers include provisions requiring the purchaser to reimburse Appellants for severance taxes. *Exchange Oil and Gas Corp. v. Eagerton*, [Ms. June 12, 1980], Cir. Ct. of Montgomery County (Appendix (ii), p.15). However, Act No. 434 unconstitutionally seeks to negate the freely negotiated agreement between the parties to the respective contracts and to rewrite the contracts to provide that Appellants must pay 100% of the increase in severance taxes, including that increase imposed upon the royalty interest share of production.

The impairment of contracts question was considered in a like situation in *Barwise v. Sheppard*, 299 U.S. 33 (1936), where the Court considered the constitutionality of a Texas

statute which imposed a severance tax on all oil and gas production, including production owned by royalty owners. The lessors/royalty owners contended that, because the terms of their oil, gas and mineral leases provided their interest in production would be "free of costs", the imposition of the tax on the royalty interest unconstitutionally abrogated their contractual rights. This Court held that the "free of costs" provision of the leases could not bar the state from *imposing* a privilege tax on the lessor's share of production, although the Court assumed that the parties were free to contract as to who would absorb the tax burden. The Court wrote:

> Plainly no stipulation in the lease can be of any avail as against the power of the state to impose the tax, prescribe who shall be under a duty to the state to pay it, and fix the time and mode of payment. ***And this is true even though it be assumed to be admissable for the lessors and lessee to stipulate as to who, as between themselves, shall ultimately bear the tax.***

*Id.* 299 U.S. at 40 (emphasis supplied).

The rule established by *Barwise* is that the state may *impose* a tax and designate the party who is required to account for and remit the tax to the state; however, private contractual arrangements as to who will bear the ultimate burden of the tax may not be abrogated by a taxing statute.

The Alabama Supreme Court misapplied the *Barwise* rule and merely held that:

> [I]t is clear that parties to a private contract cannot limit a state's *ability to levy* taxes. . . . Thus, although one party to the contracts involved here may receive less than anticipated as

> a result of Act No. 79-434, such a decrease does not amount to an impairment of the contracts.

*Eagerton v. Exchange Oil and Gas Co., Inc.*, 404 So. 2d 1, 6 (Ala. 1981) (emphasis supplied) (Appendix (i) ).

Although the Alabama Supreme Court correctly stated a legal principle recognized in *Barwise*, it completely overlooked the rule that permits parties to oil and gas contracts to stipulate who, as between themselves, will bear the tax burden.

Appellants did not contend in the Circuit Court or in the Alabama Supreme Court, nor do they contend now, that their private contracts, either with royalty owners or with wholesale purchasers, excuse them from collecting or paying the tax. Rather, the pass-through prohibition and royalty exemption provisions are unconstitutional because they negate prior contractual provisions as to who will ultimately bear the tax. *Barwise* is undeniable authority that Appellants' contracts are unconstitutionally impaired by Act 434, and the Alabama Supreme Court entirely failed to properly interpret and apply the *Barwise* decision. [4]

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4/ The rule prohibiting a state's impairment of contracts, as applied in *Barwise*, is not unqualified, but the exception to the rule is limited and has no application to the pass through and royalty exemption provisions of the Severance Tax Article. The state, pursuant to its police power, may impose restrictions on pre-existing contracts "to deal with a broad, generalized, economic or social problem", *Allied Structural Steel v. Spannaus*, 438 U.S. 234, 250 (1978). Even then, the contractual limitations must be narrowly tailored to the problem, reasonable and of limited duration. *Home Building & Loan Ass'n. v. Blaisdell*, 290 U. S. 398 (1934). Of course, it is manifest that the pass through prohibition and royalty owner exemption were not passed to address broad economic or social problems, and, even so, the provisions are not narrowly tailored, reasonable and of limited duration.

### *Question III*

The various owners of production (producers) of oil or gas are merely joint venturers and co-owners of the mineral estate, sharing pro-rata the well's production in return for their respective contributions to the venture. The attempt, by way of the royalty exemption, to exempt one owner of production from payment of the 2% increase in the severance taxes unquestionably violates the Equal Protection Clause of the Fourteenth Amendment, as the exempted owner is situated no differently from the other owners. Additionally, the royalty exemption is especially discriminatory in that the working interests are required to bear the royalty owner's share of the severance tax.

The Fourteenth Amendment protects against taxation which is palpably arbitrary or grossly inequal in its application to the persons concerned. *Dane v. Jackson*, 256 U.S. 589 (1921). Thus, a state taxing statute according differential treatment to persons must make its distinction between those persons on a rational basis, and with a legitimate purpose. *Western & Southern Life Insurance Company v. State Board of Equilization*, _____ U. S. _____ , 101 S. Ct. 2070 (1981), and the taxing statute must operate alike on all those persons similarly situated. *WHYY v. Glassboro*, 393 U.S. 117 (1968); *Hopkins v. Southern California Telephone Co.*, 275 U.S. 393 (1928).

The Severance Tax is levied "upon every person engaged . . . in the business of producing or severing oil or gas." Act 434, §1(a). The tax is levied on all production, including that of the royalty interest, Act 434, §1(b), and the tax is levied in proportion to ownership. Code of Ala., §40-20-3(a) (1975). Additionally, a "producer", under the Act, is "any person engaging . . . in the business of oil and gas production, . . . *including [owners receiving] royalty or rental from oil and gas produced* . . . ." *Code of Ala.*, §40-20-1(8) (1975) (emphasis supplied). Thus, for purposes of the Severance Tax

Article, royalty owners and working interest owners are members of the same tax classification.

More importantly, this Court, in ***Barwise v. Sheppard, supra,*** held constitutional a Texas severance tax which taxed production of all owners in proportion to their respective interests. The Court recognized that the lessor/royalty owners and the lessee/working interest owners, as co-owners and joint-venturers in the production of minerals, are members of the same class. The Court wrote:

> While operations under the lease are carried on by the lessee and not by the lessors, they nevertheless are carried on in virtue of the lease; that is to say, under stipulations made between the lessors and the lessee. The lease shows that the parties to it are, in a very practical sense, committed to and engaged in a ***common venture for their mutual benefit.*** The lessors have put into the venture their right to explore for and to extract the oil under their lands, and the lessee has put into it various drilling and pumping appliances and much expense, labor, and time. All that has been put in is ***devoted to the common purpose of producing oil*** in which the lessors and the lessee are to have stated interests. ***It is the production that is taxed against the lessors and the lessee according to their respective interests.*** The apportionment [as between owners of production] is reasonable, not arbitrary; and is as reasonable to the lessors as to the lessee.

*Id.* at 39 (emphasis supplied).

Thus, this Court is rightfully committed to the proposi-

tion that a severance tax is reasonable where the tax is equally apportioned among all of the various mineral interest owners, because there is no basis upon which to distinguish one owner from another. See also, ***Lake Superior Consolidated Iron Mines v. Lord***, 271 U.S. 577 (1926).

The Alabama Supreme Court ruled that, as to the 2% tax increase, royalty interests in the mineral estate could properly be placed in a class apart from other interests. However, that Court failed to appreciate that the Alabama Severance Tax Article provides that all mineral owners are part of the same tax classification. Additionally, the Alabama Court failed to realize that a royalty owner is no more than a joint venturer with the working interest owners, sharing in kind the production of a well. Although the state's interest in encouraging oil and gas exploration is significant, it is not reasonable to believe that working interest owners, whose share in oil or gas production is indistinguishable from that of the royalty interests, should be singled out for discriminatory treatment. The result reached is nothing more than invidious discrimination against non-royalty interest owners.

The effect of the Alabama Supreme Court's ruling is that the 4% portion of the tax is borne by all owners in proportion to their fractional ownership interest, as required by Code of Ala. § 40-20-3(a) (1975), but the 2% increase levied by Act 434 is borne entirely by the working interest owners. The class which the Legislature selected in §40-20-3(a) is ***all owners*** of production, and this is per se a just and reasonable classification under the Alabama Severance Tax Article and under ***Barwise***. [5] It is this reasonable classification which Act

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5/ This classification, i. e., one based on pro rata ownership of production, is the same classification which has been adopted by Congress for taxation of oil and gas under the Crude Oil Windfall Profits Tax. Public Law 96-232 §4996 a (1) (a).

434, as construed by the Alabama Supreme Court, destroys, by purporting to tax oil and gas production derived from the same mineral estate disproportionately to the mineral interest ownership.

The bottom line paradox resulting from the Alabama Supreme Court's decision is that the 4% portion of the tax is levied pro rata, proportionate to ownership, on both royalty and working interest owners, under the reasonable class of all owners, but the 2% tax increase is not levied in proportion to ownership. Thus, the Alabama Supreme Court holds that the royalty owner is not to be classified with working interest owners as to the 2% portion of the tax, but that royalty owners and working interest owners are part of the same classification for purposes of the 4% portion of the tax!

The Alabama legislature chose to levy an additional 2% tax on *all* oil and gas production, and the tax was to be paid by *all* those producing or severing the oil or gas, exept owners of royalty interests. Since, in this case, the royalty interests, exempted from taxation, range in amounts of up to 54% of the minerals severed, *Exchange Oil and Gas Corp. v. Eagerton*, [Ms. June 12, 1980], Cir. Ct. of Montgomery County (Appendix ii, p. 13), the resulting tax on the other mineral interests (working interests) is in varying disproportion to the actual working interest owned. The result is that working interest owners bear the tax burden of the exempt royalty owners, and, among working interest owners, the tax is imposed regressively. That is, the smaller the working interest, the greater the tax burden in proportion to that interest.

Even assuming royalty owners are not to be included in the class of all producers including working interest holders; nevertheless, the tax does not operate uniformly among working interest holders. If, as the Alabama Supreme Court speculated, the taxing scheme was designed to pursue the legitimate purpose of encouraging oil and gas production, see *Eagerton v.*

*Exchange Oil and Gas Corp.*, 404 So. 2d 1, 5 (1981), certainly, statutory classifications distinguishing among working interest owners do no "rest on differences pertinent to the subject in respect of which the classification [was] made". *Power Manufacturing Co. v. Saunders*, 274 U.S. 490, 494 (1927).

No tax on production can be said to encourage production, and that is especially true when the tax is levied entirely on those responsible for costs of exploration, drilling and the dry hole risk, and in amounts disproportionate to the working interest owned. There can be no rational basis to believe that the tax, as imposed, would encourage oil and gas production, and the taxing statute is palpably arbitrary and grossly inequal in its application to the working interest owners.

*Question IV*

At the foot of the levying portion of Act 434, in the first paragraph, a proviso was added by amendment in Committee by the bill's sole sponsor, which reads as follows:

> "Provided, however, that said additional *increase* shall be limited to those oil and gas wells from between 15,000 and 15,800 feet in the Smackover formation."

Act 434 (Appendix (v) )

Prior to amendment of the Bill, the Bill without question levied an increase in severance taxes on all wells within the state. The sponsor testified that his intention in inserting the above quoted limiting language was to restrict the increase to the confines of his own County in order to address his county's revenue shortfall. *Exchange Oil & Gas v. Eagerton*, Cir. Ct. Montgomery County, Ala. [Ms. June 12, 1980] Appendix (ii), p. 17-19. He further testified that he could muster

no support for a statewide increase from the Speaker, the Chairman and Members of the Ways and Means Committee the Governor. Accordingly, he testified that he amended the Bill by inserting the depth proviso so as to make the Bill one of the local application, which then was perfunctorily passed by both Houses on the special order calendar as a "local" bill. *id.* In presenting the Bill to both the House and Senate, the sponsor represented the Bill to be one which affected only Escambia County. *Id.*

The records of the Alabama Fiscal Office, a statutory arm of the legislature (Code of Ala. § 29-5-7 et seq. (1975) ) with access to the floor of both Houses and all Committee Hearings, established that revenues to be derived from the bill were based only on production from wells located in Escambia County. *Id.* This estimate or "fiscal note," which was physically attached to the Act as required by law, was prepared by the Fiscal Office when the Bill was amended to include the above quoted depth proviso. *Id.* Previously, the fiscal note had estimated revenues based on statewide production.

Furthermore, if more overwhelming and uncontroverted evidence is needed, or can be imagined, the same sponsoring representative, Representative Hines of Escambia County, in the 1980 legislative session, introduced House Bill No. 909 (Appendix (v) ) to amend Act 434. House Bill 909 Declared:

> It is hereby declared the intent of the Legislature of Alabama that Act 434, Acts of Alabama 1979, ***did not amend Section 40-20-2 Code of Alabama, 1975, so as to increase the rate of oil and gas severance tax uniformly within the State*** of Alabama but that the enactment of said Act 434 ***was intended to limit and did limit the increase of taxation*** only to those wells between 15,000 and 15,800 feet in the smackover formation."

H. B. 909, 1980 Ala. Leg.

This bill summed up the intent that Act 434 was to be applied locally to only the wells described in the "proviso" included in Act 434.

Dispite all of this, and in spite of the fact that the Supreme Court of Alabama had held, in an unbroken line of decisions dating from the turn of the century, that legislative intent is the "pole star" of statutory construction, the Supreme Court on appeal of this case inexplicably held that Act 434 applied statewide, and refused to consider the evidence establishing without question the legislative intent of Act 434, saying only that it could not "stray into mazes of conjecture or search for an imaginary purpose in construing [a] statute" ! ***Eagerton v. Exchange Oil & Gas***, 404 So. 2d 1, 4 (Ala. 1981).

The Supreme Court of Alabama has, without deviation and in scores of cases, referred to the legislative history, statements made on the floor of the legislature, Journal entries, reports of committees, and opinions of members of the legislature made on the floor to ascertain legislative intent. [6] Indeed, the Ala-

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[6] See, e.g., Alabama State Board of Health v. Chambers County, 335 So. 2d 653 (1976) (the Court will look less at the "letter or words of the statute than at the reason and spirit of the law" which is the "pole star" of statutory construction); State Docks Commission v. State Ex Rel Jones, 227 Ala. 521, 150 So. 537 (1933) (where the Court looked to various aids outside the statute, viz: Journals, reports of the Finance and Taxation Committee); Morgan v. School Commissioners of Mobile County, 348 Ala. 22, 26 So. 2d 108 (1946) (where the Court looked to statements made during discussion on the floor); Ex Parte Southern Bell Tel. & Tel. Co., 269 Ala. 139, 143, 99 So. 2d 118, 121 (1957) (where the court looked to statements during debate on the floor); City of Montgomery v. Graham, 255 Ala. 685, 53 So. 2d 363 (1951), and L&N R.R. Co. v. State, 201 Ala. 317, 78 So. 93 (1917) (floor debate admitted and considered as conclusive); Board of Revenue of Jefferson County v. Kayser, 205 Ala. 289, 88 So. 19 (1921) (opinions of Members expressed on the floor considered an admissible and highly persuasive); Glenco Paving Co.

bama Supreme Court has held that it not only has the right but, indeed, the duty to examine legislative history in order to ascertain the true intent of the lawmaking body. *Morris v. State*, 271 Ala. 122 So. 2d 914 (1960). Moreover, even where the wording of the statute is clear and unambiguous, the Supreme Court of Alabama is committed to the proposition that the legislative intent must be given effect as the "pole star" in order to override even the apparent plain meaning of the wording of a statute.

Thus, the settled and unequivocal rule in Alabama was stated in Abramson v. Hard, 229 Ala. 2, 155 So. 590 (1934), as follows:

> [N]or are we confined in arriving at the true meaning of the words used . . . . The intention of the lawmaker constitutes the law. The thing may be within the letter of the statute and not within the meaning or within the meaning or not within its letter. *Cocciolla v. Wood Dickerson Supply Co.* 136 Ala. 532, 537, 33 So. 856. 857 . . . . It will not do to be governed uniformly by literal expressions of a statute; for by so doing, we should many time *wander entirely* from the obvious intent of the legislature.

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6/ Continued
v. Graves, 266 Ala. 154, 94 So. 2d 872 (1957) (affidavits of employees of State Highway Department and State Finance Department relied upon in construing the statute); Morris v. State, 271 Ala. 290, 122 So. 2d 914 (1960) (Court considered as admissible and meaningful Minute of the Code Committee); Houston County v. Martin, 232 Ala. 511, 169 So. 13 (1936) (entries in the Journals of the House and Senate); County Board of Education v. State, 239 Ala. 276, 194 So. 881 (1940) and State v. Bryan, 285 Ala. 247, 231 So. 2d 118 (1970) (Court looked generally to all of legislative history in construing taxing statutes).

> *Davis & Co. v. Thomas*, 154 Ala. 279, 282, 45 So. 897, 898; *Thompson v. State* 20 Ala. 54. The court is often not controlled by the literal language of the statute, but by its meaning when properly interpreted, though outside of such literal meaning. *City of Birmingham v. Southern Express Co.* 164 Ala. 529, 51 So. 159; Cocciola et al v. *Wood Dickerson Supply Co.*, 136 Ala. 532, 537, 33 So. 856, 857; *Davis & Co. v. Thomas*, 154 Ala. 279, 45 So. 987; *Graham v. City of Mobile*, 17 Ala. App. 19, 81 So. 355; 59 Corpus Juris, 964 et seq, *Nunez v. Borden*, 226 Ala. 381, 147 So. 166, 167. In the interpretation and construction of statutes the *primary rule* is to ascertain and give effect to the intention of the legislature. As has been frequently stated in effect *the intention of the legislature constitutes the law.*

*Id.* 229 Ala. at 155 So. at _____ (emphasis supplied). See also, *American Bakeries v. City of Opelika*, 229 Ala. 388, 157 So. 206 (1934).

Additionally, this rule is not only the rule of the Supreme Court of Alabama, but also of this Court. [7]

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7/ See, e g., *Pipefitters Local Union No. 562 v. U. S.*, 407 U.S. 385 (1972) (sponsoring senator's view of the limited reach of his bill held to be controlling); *Galvan v. Press*, 347 U.S. 522 (1953) (sponsor's memorandum concerning the meaning of legislation was declared to "preclude an interpretation" contrary to his statements); *B & O Railroad Co. v. Jackson*, 233 F. 2d 660 (D. C. App. 1956), aff'd 353 U.S. 325 (where sponsor's statements were treated as legislative history which the Court could not "ignore" where such statements were so "clear and compelling" as to show the "intent of the proviso" *Harrison v. Northern Trust Co.*, 317 U.S. 418 (1942), (Court looked to legislative history for explanation of act's meaning "no matter how clear the words may appear on 'superficial examination' "); *U. S. v. American Trucking Assoc.*, 310 U.S. 532 (1939) (Court has duty to look to legislative purpose even where wording of statutes are plain and clear since there is no "rule of law" forbidding interpretation in accordance with the legislative purpose); *NLRB v. Fruit and Vegetable Packers & Warehousemen*, 377 U.S. 58 (1964) and Schweg-

Indeed, this is the rule of all American jurisdictions. [8] Nevertheless, the Alabama Supreme Court, in defiance of its own well established rule, held that no evidence should be considered with respect to legislative intent and that "some" (but not all) of the evidence offered by Appellant was inadmissible!

Thus, by perversion of established rules of law and the undisputed facts, the Alabama Court extended the application of a taxing statute far beyond the scope intended - to sixty-seven counties rather than to only one county. By arbitrarily rejecting the uncontroverted evidence, which is so clearly admissible, the Alabama Supreme Court trampled unmercifully upon

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7/ Continued
*mann Bros. v. Calvert Distillers Corp.*, 341 U.S. 384 (1951) ("[I]t is the sponsors to which the court looks when the meaning of the statutory words is in doubt.") (oral and written statements of the sponsor); *Chicago and NWR Co. v. United Trnsp. Union*, 402 U.S. 570 (1971) (oral statements of the proponents declared to be "entitled to great weight" in construction of an act.); *National Woodwork Mfrs. Asso. v. NLRB*, 386 U.S. 612 (1967), (Silence of the sponsors on certain points was looked to in construing the Act.)

8/ See, e.g., *Indiana Aeronautics Commission v. Ambassadair, Inc.*, 368 N.E. 2d 1340 (Ind. 1977); *Silver v. Brown*, 409 P. 2d 689 (Cal. 1966); *State v. Wilson*, 562 P. 2d 172 (1977); *Pharr v. Hagglund*, 374 P. 2d 316 (Alaska 1962); *Pellett v. Industrial Com. of Wisconsin*, 156 N.W. 956 (1916) (Committee reports and discussion before Committee admitted); *Buehler Bros. v. Industrial Commissioner*, 265 N.W. 226 (1936) (processing before the Committee admitted and considered by the Court); *Sato v. Hall*, 217 Pac. 520 (1923) (statements made on the floor of the Congress considered and given weight); *Sullivan v. Town Council of West Hartford*, 143 Conn. 280 (1956) (Legislative history, policy and statements by legislator who reported bill on behalf of legislative committee said to be strong indications of the legislative intent ); 2A Sutherland, Statutory Construction, §48.16. PP. 221-222, §48.10, P. 210 and §48. 14.

Appellants' 14th Amendment rights to Due Process and a full and fair hearing on the undisputed evidence.

This Court has long recognized that a violation of the Due Process Clause may be accomplished by the State Judiciary in the course of construing a state statute and that the federal guaranty of Due Process extends to state action through the judicial branch, as well as the legislative, executive and administrative branches of the government. ***N.A.A.C.P. v. Alabama,*** 357 U.S. 449 (1958); ***Brinkerhoff-Faris Trust & Sav. Co. v. Hill,*** 281 U.S. 673, (1959). Here, the Supreme Court of Alabama denied Appellants Due Process of Law in its primary sense, i. e., an opportunity to be heard and to defend their substantive rights. The denial of Due Process was accomplished by a retroactive change in state evidentiary law. Simply put, the Supreme Court of Alabama refused to consider admissible evidence regarding the legislative history of Act 434 and arbitrarily and capriciously adopted an interpretation of Act 434 which was contrary to the trial court's holding, contrary to its own rules of evidence, contrary to the interpretation of Act 434 by its sole sponsor, contrary to the interpretation of Act 434 by the Legislative Fiscal Office of the State of Alabama, contrary to the wording of the proviso, contrary to subsequent legislative history, and utterly without support in the Record. While it is true that this Court will not in the usual case substitute its judgment for that of a state court in construing a state statute, where the effect of a decision is to deny Due Process, this Court will assume jurisdiction and reverse.

Thus, in ***Brinkerhoff,*** supra, this Court, in reversing the Supreme Court of Missouri's interpretation of a state statute, held as follows:

> It is plain that the ***practical effect*** of the Missouri Court is to deprive the plaintiff of property without affording it at any time an opportunity to be heard in its defense. . . . Our present concern is solely whether the plaintiff has been accorded due process in the primary sense, - - whether it has had an opportunity to present its case and be heard in its support . . . ***But while it is for the state courts to determine the objective as well as the substantive law of the state they must in so doing accord the parties due process of law.***

***Brinkerhoff-Faris Trust & Sav. Co. v. Hill,*** 281 U.S. at 678, 681-82 (emphasis added).

The principle was again recognized by this Court in ***Bouie v. Columbia,*** 378 U.S. 347 (1967), dealing with the effect of a state court's overruling of settled decisions. This Court said:

> When a state court overruled a consistent line of procedural decisions with the retroactive effect of denying a litigant a hearing in a pending case, it thereby deprives him of due process of law "in its primary sense of an opportunity to be heard and to defend [his] substantive right" Brinkerhoff-Faris Trust and Sav. Co. v. Hill, 281 U.S. 673, 678, 74 L. Ed. 1107, 1112, 50 S. Ct. 451.

***Bouie v. Columbia,*** 378 U.S. at 354.

Finally, in ***Williams v. Tooke,*** 108 F.2d 758 (5th Cir. 1940).

relying on *Postal Telegraph Co. v. Newport*, 247 U.S. 464 (1917), the Fifth Circuit held that a state court decision unsupported by the record was arbitrary and capricious and violated the 14th Amendment. The Court held:

> "If a case between private parties is arbitrarily and capriciously decided in violation of settled principles of law and contrary to undisputed facts though the court so deciding had jurisdiction over the suit, the judgment may be in violation of the 14th Amendment."

*Williams v. Tooke*, 108 F.2d at 759.

Under these authorities, and others, the Alabama Supreme Court's decision is clearly arbitrary and capricious.

Appellants were denied Due Process of Law in that the Supreme Court of Alabama refused to consider or give Appellants a hearing on the admittedly admissible evidence relating to the legislative history of Act 434. This denial of Due Process is made even more acute by the fact that no reasonable man viewing the statute on its face, much less in conjunction with its legislative history, could give Act 434 the interpretation given to it by the Alabama Supreme Court. Thus, the decision of the Alabama Supreme Court is arbitrary and capricious.

By interpreting Act 434 as a statewide Act, the Supreme Court of Alabama has judicially rewritten the statute. This new interpretation of the statute by the State's highest court is contrary to the interpretation declared by the sole sponsor to the Alabama Legislature, contrary to the interpretation of the Act by the Legislative Fiscal Office, contrary to the

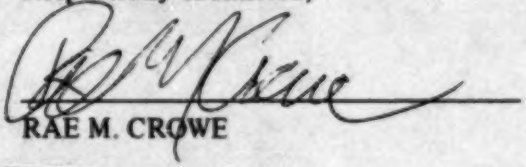
legislative Journals, contrary to the stated purpose for Act 434 (as documented in subsequent legislative history) and contrary to the Trial Court's finding of facts.

## CONCLUSION

We submit that even Oil Companies are entitled to the protective cloak of the 14th Amendment regardless of the State's financial needs.

The questions presented by this appeal are substantial and merit the plenary jurisdiction of this Court, further examination in briefs, and oral argument.

Respectfully submitted,



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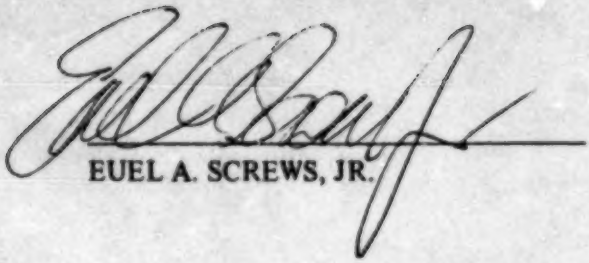

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**IN THE**
**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1981**

**EXCHANGE OIL AND GAS CORPORATION, et al.,**
**Appellants,**

**V.**

**RALPH EAGERTON, JR., as Commissioner of Revenue of the State of Alabama, et al.,**
**Appellees.**

**On Appeal From the Supreme Court of the State fo Alabama**

**PROOF OF SERVICE**

I,RAE M. CROWE, one of the attorneys for Exchange Oil and Gas Corporation, Getty Oil Company, and Union Oil Company of California, appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 8th day of January, 1982, I served 2 copies of the foregoing Jurisdictional Statement on all parties required to be served, as follows:

1. On appellee herein, Ralph P. Eagerton, Jr., as Commissioner of Revenue of the State of Alabama, by depositing a copy in a United States post office, with first class postage prepaid, addressed to John J. Breckenridge, his counsel of record, at 201 Administrative Building, Montgomery, Alabama 36130.

2. On all other parties to the proceeding below, by depositing copies in a United States post office, with first class postage prepaid, addressed to their respective attorneys of

record, as follows:

To Louis E. Braswell, Esq., Attorney for Exxon Corporation and The Louisiana Coal and Exploration Company,
Post Office Box 123
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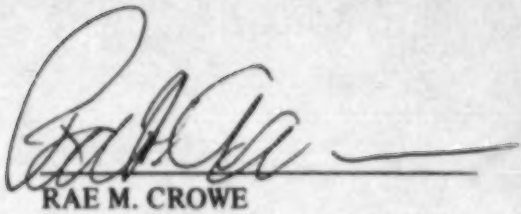

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# Appendix

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81-1268

Supreme Court Case No. _____

In the Supreme Court of the United States

October Term, 1981

EXCHANGE OIL AND GAS CORP., GETTY OIL CO., and UNION OIL CO. OF CALIFORNIA,

Appellants,

versus

RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF ALABAMA

# APPENDICIES

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Appendix (i)

THE STATE OF ALABAMA
JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

SPECIAL TERM - 1981

Ralph P. Eagerton, Jr.,
as Commissioner of Revenue
of the State of Alabama

79-823 v.

Exchange Oil and Gas Corporation, et al.

Appeal from Montgomery Circuit Court

BEATTY, JUSTICE.

Fourteen oil and gas producers filed similar suits challenging the constitutionality of Act No. 79-434, approved by the Alabama Legislature in its 1979 Regular Session, and seeking refunds of oil and gas severance taxes paid pursuant to the Act. The trial court held

the Act to be unconstitutional. Ralph P. Eagerton, Jr., as Commissioner of Revenue, appealed. We reverse and remand.

Before the legislature enacted Act No. 79-434, the statute governing the amount of oil and gas severence [sic] tax was Code of 1975, § 40-20-2. That section in its relevant part read:

> (a) There is hereby levied, to be collected hereafter, as herein provided, annual privilege taxes upon every person engaging or continuing to engage within the state of Alabama in the business of producing or severing oil or gas as defined herein from the soil or the waters, or from beneath the soil or the waters, of the state for sale, transport,

storage, profit or for use. The amount of such tax shall be measured at the rate of five percent of the gross value of said oil or gas at the point of production until October 1, 1973, at which time the rate of such tax shall decrease to four percent, which shall be the applicable rate thereafter.

(b) The tax is hereby levied upon the basis of the entire production in this state, including what is known as the royalty interest, on which production the amount of such tax shall be a lien, regardless of the place of sale or to whom sold, or by whom used, or the fact that the delivery may be made to points outside the state; and the tax shall accrue at the time such oil or

gas is severed from the soil or the waters, or from beneath the soil or the waters, and in its natural, unrefined or unmanufactured condition.

Code of 1975, § 40-20-8, dealt with the allocation and distribution of the taxes collected.

The caption of Act No. 434 states that its purpose is: "To amend Code of Alabama 1975, Sections 40-20-2 and 40-20-8, so as to increase the rate of tax; to provide further for the distribution of the proceeds of the tax; and to provide certain exemptions from the increased rate." Section 1(a) of Act 79-434 provides:

Code of Alabama 1975, § 40-20-2, is amended to read as follows:

"40-20-2. (a) There is hereby levied, to be collected hereafter, as herein provided, annual privilege taxes upon every person engaging or continuing to engage within the State of Alabama in the business of producing or severing oil or gas as defined herein, from the soil or the waters, or from beneath the soil or the waters, of the state for sale, transport, storage, profit, or for use. The amount of such tax shall be measured at the rate of six per centum of the gross value of said oil or gas at the point of production. All wells producing less than 26 barrels of oil per day shall be taxed at the rate of four per centum (4%)

of the gross value of said oil or gas at the point of production. All wells that come into production after the effective date of this Act shall be taxed at the rate of four per centum (4%) of the gross value of said oil or gas at the point of production for a period of ten years after production begins. Ten years after production begins, such tax shall be then imposed at the rate of six per centum (6%) on such wells that go into production after the effective date of this Act. Provided, however, that said additional increase shall be limited to those oil and gas wells from between 15,000 and 15,800 feet in the smackover formation. . . ."

The primary issue in this appeal deals with the effect of the phrase which reads "said additional increase shall be limited to those oil and gas wells from between 15,000 and 15,800 feet in the smackover formation," (hereinafter the smackover provision) in Act No. 79-434.

Code of 1975, § 40-20-2 had previously imposed a 4% severance tax on statewide oil and gas production. The commissioner contends that Act No. 79-434, the amendatory Act, was intended to increase that rate from 4% to 6% statewide. The appellees, however, urge that because of the inclusion of the sentence which reads "said additional increase shall be limited to those oil and gas wells from between 15,000 and 15,800 feet in the smackover formation," the entire Act was intended only to impose an

increase on the wells which were producing oil and gas from the smackover formation at the depth specified.

It is undisputed that the smackover formation underlies only twelve counties in Alabama and that that is an unchanging fact. It is also clear that at the time of the passage of the Act, the only production in the smackover formation from 15,000 to 15,800 feet in Alabama was in Escambia County. Thus the appellees urge that the increase from 4% to 6% was intended only to apply to those wells in the smackover formation at that depth, all of which were in Escambia County. Since the Act as so interpreted would only apply to one county, appellees contend that it is a local Act.

In Town of Loxley v. Rosinton Water, Sewer and Fire Protection Authority, Inc.,

Ala., 376 So. 2d 705 (1979) this Court said:

> In interpreting statutes the underlying consideration, always, is to ascertain and effectuate the intent of the legislature as expressed in the statutes. Employees' Retirement System of Alabama v. Head, 369 So.2d 1227 (Ala.1979). While specific language used by the legislature is subject to explanation, such language cannot be detracted from, or added to. May v. Head, 210 Ala. 112, 96 So. 869 (1923). Furthermore, when the language of a statute is clear and unambiguous there is no room for judicial construction. Employees' Retirement System of Alabama v. Head, supra. . . . The purpose of

interpretation is not to improve a statute but rather to explain the express language used in the statute. Lewis v. Hitt, 370 So.2d 1369 (Ala.1979).

The appellant contends that the language of the smackover provision, which reads, "said additional increase shall be limited to those oil and gas wells from between 15,000 and 15,800 feet in the smackover formation" (emphasis added), should properly be construed by reading that provision in conjunction with the sentence immediately preceding it. The preceding sentence limits the increase on wells that go into production after the effective date of the Act to 4% for a period of ten years and then provides that after ten years it shall be raised to 6%.

By reading the two sentences together, appellant urges that the smackover provision would refer only to the increase from 4% to 6% on new wells after a ten-year moratorium and not to the statewide severance tax increase from 4% to 6%. In other words, the appellant urges that the smackover provision requires that new wells will all be taxed at a rate of 4% for ten years, and then there shall be an increase to 6% on those new wells in the smackover formation at the depth specified. According to the appellant, the smackover provision was not intended to limit the entire Act so that wells in the smackover foundation at that depth were the only ones to be taxed at a rate of 6%.

The manifested intent of the legislature, as stated in the Act itself,

was to levy this tax upon "every person engaging or continuing to engage within the State of Alabama in the business of producing or severing oil or gas. . . ." This a clear and unambiguous statement that the legislature intended for the tax increase to apply statewide. Moreover, Act No. 79-434 specifically replaces and amends Code of 1975, § 40-20-2 which imposed a 4% severance tax statewide. If this Act were interpreted as applying only to those wells in the smackover formation at the specified depth, and only in Escambia County, there would be no provision for taxing the rest of the state. Certainly that was not the intent of the legislature.

After a careful reading of the Act, we are convinced that the smackover provision should logically be read in

conjunction with the preceding sentence and should only be a construed as a limitation on the taxing of new wells. Although the appellees put forth various forms of extrinsic evidence, some of which was clearly inadmissible, in order to prove the intent of the legislature, the general rule is that when the intent of the legislature can be determined from the language of the statute itself, we do not need to resort to extraneous matters to determine the legislative intent. "Courts can only learn what [the] Legislature intended by what it has said, and have no right to stray into mazes of conjecture or search for an imaginary purpose, in construing [a] statute." Alabama Industrial Bank v. State ex rel. Avinger, 286 Ala. 59, 237 So. 2d 108 (1970). We are thus compelled to find that the

smackover provision was not intended by the legislature to be a limitation which affected the entire Act.

The trial court held that because of the inclusion of the smackover provision Act No. 79-434 was a local Act. This decision was apparently based on the authority of Peddycoart v. City of Birmingham, Ala., 354 So. 2d 808 (1978) in which this Court held that if at the time legislation was adopted it applied to any political subdivision less than the whole state, it was a local Act.

Since we interpret the smackover provision as being a limitation on the taxing of new wells, and not as a limitation on the entire Act, we find that Act No. 79-434 is one which in its terms and effects applies to the whole state. Not only does the Act impose an increased

severance tax on the production of oil and gas statewide, but the smackover provision itself applies statewide by giving a statewide incentive to create new wells except in the smackover formation at a depth of 15,000 to 15,800 feet. Accordingly, Act No. 79-434 is a general law.

Based on the erroneous determination that Act No. 79-434 was a local law, the trial court held that Act No. 79-434 violated Section 106 of the Alabama Constitution because it was not published or posted as required by that section for local laws, that it violated Section 111 of the Alabama Constitution because Act No. 79-434 had been introduced as a general law and amended so as to be a local law on passage, and violated Section 105 of the Alabama Constitution because

Act No. 79-434 was a local law which dealt with a subject covered by a general law. Since we have determined that Act No. 79-434 is a general law, there can be no conflict with any of these sections and we need not discuss these arguments in depth.

Act No. 79-434, Section 1(d)(e), reads as follows:

> Any person who is a royalty owner shall be exempt from the payment of any increase in taxes herein levied and shall not be liable therefor. (e) The privilege tax herein levied shall be absorbed and paid by those persons engaged in the business of producing or severing oil or gas only, and the producer shall not pass on the costs of such tax payments, either directly or indirectly, to the

consumer; it being the express intent of this act that the tax herein levied shall be borne exclusively by the producer or severer of oil or gas.

The trial court held that because of the above-quoted royalty owner exemption and pass-through prohibition, Act No. 79-434 lacked uniformity and established arbitrary classifications in violation of the equal protection and due process clauses of the federal and state constitutions.

The appellees urge that there was no reasonable ground for exempting royalty owners from the increase and thus that the trial court correctly found the classification to be arbitrary. They contend that because Code of 1975, § 20-20-1(8) includes royalty owners within

the definition of the term "producers," the tax is being imposed unequally within the class of producers. This, they urge, is especially true since the pass-through prohibition precludes producers from passing the tax on to the consumers.

In Haden v. Watson, 270 Ala. 277, 117 So. 2d 694 (1960) this Court discussed the power of the legislature to establish classifications for the purpose of license and excise taxes. There it was said:

> The legislature has the broadest range and powers in establishing classifications or subclassifications for the purpose of license and excise taxes. State v. Pure Oil Co., 256 Ala. 534, 55 So.2d 843. Further the legislature in classifying subjects for taxation is not required to state

the grounds for classification. State v. Pure Oil Co., supra. . . .

Furthermore particular privileges, occupations, classes or subclasses of businesses may be licensed and taxed and other privileges, occupations or businesses need not be included and can be entirely exempt therefrom. Henry v. Shevinsky, 239 Ala. 293, 195 So. 222; State v. Pure Oil Co., supra.

In other words the classification of occupations and privileges for taxation is largely a matter of legislative discretion, and it will not be interfered with by the courts as being in violation of the rules of equality and uniformity unless it is palpably arbitrary and unreasonable and unless there is no

conceivable state of facts which would support it. State v. Pure Oil Co., supra; Carmichael v. Southern Coal & Coke Co., 301 U.S. 495, 57 S.Ct. 868, 81 L.Ed. 1245, 109 A.L.R. 1327; Frazier v. State Tax Commission, 234 Ala. 353, 175 So. 402, 110 A.L.R. 1479.

In the instant case the legislature sought to exclude royalty owners from the increase in the severance tax. Admittedly royalty owners are a subclass of producers under Code of 1975, § 40-20-1(8); however in Haden, supra, we noted that a distinction in the imposition of taxes can be made between subclassifications. Such a distinction will not be interfered with unless there is no conceivable set of facts to support it. Here it is

conceivable that the exclusion of royalty owners from this increase in tax could encourage the development of new oil and gas wells. There being a conceivable reason to support the distinction, the legislative enactment should not be deemed arbitrary and should be upheld.

Similarly the trial court held the smackover provision to be an arbitrary and unconstitutional classification because the increase was limited only to the production from the depth of 15,000 to 15,800 feet. Since the legislature could have intended to encourage oil and gas production in other parts of the state and in other layers of the earth, we find this to be a reasonable distinction and hold this provision was not unconstitutional for this reason either.

The trial court also held that because of the royalty owner exemption and the pass-through prohibition, Act No. 79-434 was unconstitutional in that it impaired contractual obligations. The contractual obligations in question were leases which required royalty owners to pay their share of severance taxes and sales contracts which required the purchasers to reimburse the plaintiffs for tax increases. The United States Supreme Court faced a similar situation in Barwise v. Sheppard, 299 U.S. 33, 57 S.Ct. 70,79 L.Ed. 637 (1936) where it was said:

> Plainly no stipulation in the lease can be of any avail as against the power of the State to impose the tax, prescribe who shall be under a duty to the State to pay it, and fix the time and mode of payment. And this

> is true even though it be assumed to be admissible for the lessors and the lessee to stipulate as to who, as between themselves, shall ultimately bear the tax. . . .

Thus it is clear that parties to a private contract cannot limit a state's ability to levy taxes. This was recognized by the Alabama Supreme Court in McPhillips Mfg. Co. v. Curry, 241 Ala. 366, 2 So. 2d 600 (1941) where it was said:

> The existence of an executory contract between or among two or more individuals presents no obstacle to the right or power of the State to levy or impose a tax which may adversely affect the financial interest of either or any of the

> parties which may have been acquired under or by reason of the mutual covenants of such parties to the contract. . . .

Thus, although one party to the contracts involved here may receive less than anticipated as a result of Act No. 79-434, such a decrease does not amount to an impairment of the contracts. The legislature must retain the authority to tax free from interference by the contracts of private persons. Act No. 79-434 does not unconstitutionally impair the contracts of the parties.

The trial court determined that Act No. 79-434 was an unconstitutional burden on interstate commerce and thus violated the United States Constitution. Specifically the trial court found that

the pass-through prohibition violated Article I, Section 8, Clause 3 of the U.S. Constitution because Congress had preempted the field which the pass-through prohibition attempted to address. The trial court held that the Natural Gas Policy Act of 1978, codified at 15 U.S.C. §§ 3301-3432, prevented the legislature from mandating that the increased severance tax could not be passed on by the producers.

The Natural Gas Policy Act established maximum lawful prices at the wellhead for all sales of natural gas. That Act in Section 3320 reads:

> [A] price for the first sale of natural gas shall not be considered to exceed the maximum lawful price applicable to the first sale of such

> natural gas under this part if such first sale price exceeds the maximum lawful price to the extent necessary to recover (1) state severance taxes attributable to the production of such natural gas and borne by the seller . . .

Nowhere in that section is it stated that the oil companies are entitled to "pass-through" increases on state severance taxes. Rather, the Act merely provides that the lawful ceiling on the first sale at the wellhead may be raised if a severance tax is imposed by the states. The two Acts are aimed at entirely different purposes. In other words, although it would be perfectly permissible for the oil and gas companies to raise the price for the first sale of

natural gas, subject to the limitations of the Natural Gas Policy Act, all that Act No. 79-434 requires is that the increase in severence [sic] tax mandated by that Act be borne by the producer or severer of the oil or gas. Thus the pass-through prohibition contained in Act No. 79-434 does not conflict with the Natural Gas Policy Act of 1978, and the trial court's finding to that effect is due to be reversed.

The trial court declared that Act No. 79-434 was unconstitutional because it violated Section 45 of the Alabama Constitution of 1901 which provides that "[e]ach law shall contain but one subject which shall be clearly expressed in the title. . . ."

The title to Act No. 79-434 reads as follows:

> To amend Code of Alabama 1975, Sections 40-20-2 and 40-20-8, so as to increase the rate of tax; to provide further for distribution of the proceeds of the tax; and to provide certain exemptions from the increased rate.

The trial court declared that Act No. 79-434 covered more than one subject and that the title did not clearly express the subjects of the Act. Specifically the trial court found that the title did not make any reference to the following topics:

> 1. The purported consumer protection and/or pricing regulation in form of the prohibition against pass through contained in Section 1(e).

2. The provision requiring the "producer or severer" to absorb and pay the tax.

3. The extent of the increase of the tax.

4. The fact that the Act imposed differing tax rates on different production.

5. That producers would be required to bear the royalty owner's share of the tax.

6. The fact that the tax is not based on ownership of the mineral interest.

7. That purchasers would be prohibited from accounting for and paying the tax in derogation of the provisions of Section 40-20-3.

The purpose of Section 45 has generally been said to be to sufficiently disclose the subject of the Act so as to apprise the legislature and the public of the matter to be legislated therein. Bozeman v. Conecuh County Board of Education, 282 Ala. 543, 213 So. 2d 388 (1968).

In Boswell v. State, 290 Ala. 349, 276 So. 2d 592 (1973) this Court, quoting Ballentyne v. Wickersham, 75 Ala. 533 (1883), stated the rules governing the application of Section 45. There it was said:

> "[T]he title of a bill may be very general, and need not specify every clause in the statute. Sufficient if they are all referable, and cognate to the subject expressed.

> And when this subject is expressed in general terms, every thing which is necessary to make a complete enactment in regard to it, or which results as a complement of the thought contained in the general expression, is included in, and authorized by it."

In this case we find that the title of the Act was sufficient to meet the requirements of Section 45. The seven provisions which the trial court found not to be included in the title are provisions which are necessary to make the enactment complete or at least are provisions which result as a complement of the thought contained in the general expression of the title. Therefore we hold that Act No.

79-434 does meet the requirements of Section 45.

The trial court held that Act No. 79-434 was "so vague, uncertain, indefinite, ambiguous, and conflicting with and repugnant to other existing provisions of other statutes that it cannot be enforced on any rational basis and, therefore, must be stricken." While we recognize that courts have the power to declare legislative enactments inoperative and void for indefiniteness or uncertainty, that power should only be exercised when the statute is so incomplete, or irreconcilably conflicting, or so vague and indefinite, that it cannot be executed, and the court is unable to determine with any reasonable degree of certainty what the legislature intended. Jansen v. State ex rel. Downing, 273 Ala.

166, 137 So. 2d 47 (1962). We do not find this Act to be so defective.

Moreover, we note that in construing statutes courts must presume that statutes are constitutional and should not hold them unconstitutional unless they are convinced beyond a reasonable doubt of their unconstitutionality. Alabama Dairy Commission v. Food Giant, Inc., Ala. 357 So. 2d 139 (1978).

In Brittain v. Weatherly, 281 Ala. 683, 207 So. 2d 667 (1968), quoting State ex rel. Montgomery v. Merrill, 218 Ala. 149, 117 So. 473 (1928), this Court said:

> "It is a well-recognized rule that it is the duty of the court to uphold a law when it is fairly susceptible of two interpretations, one of which maintains its

> constitutionality and the other strikes it down, though the adoption of the former be the less natural. . . ."

For this reason we find that the statute is not void for indefiniteness or uncertainty.

Since we have determined that the provisions of Act No. 79-434 are constitutional, we do not need to address the question of whether the severability clause should have been used by the trial court to save this Act or portions thereof.

On the same day the trial court rendered the final order in this case, it granted partial summary judgment in favor of plaintiffs Warrior Drilling and Engineering Company, Inc., Pruet

Production Company and Anderman Operating Company under the "26 barrel provision" of Act No. 79-434, which provides that "All wells producing less than 26 barrels of oil per day shall be taxed at the rate of four per centum (4%) of the gross value of said oil or gas at the point of production." The trial judge specifically found that the exemption in the Act refers to both oil or gas production. The trial court's order granting the partial summary judgments stated:

> Since the language of the exemption from the face of the Act is clear and unequivocal, and each of these Plaintiffs have proven that only one or two of their wells at most produce more than 26 barrels of oil per day, said Plaintiffs Warrior Drilling and

> Engineering Co., Inc., Pruet Production Company and Anderman Operating Company are entitled to judgment. [Emphasis added.]

While we agree that the exemption in the Act refers to all wells producing either oil or gas, the trial court's order granting partial summary judgment is illogical. Since the trial court recognizes that one or two of the Plaintiffs' wells do produce more than 26 barrels of oil, it was improper to hold that Act No. 79-434 did not apply to those plaintiffs. For that reason the motion for partial summary judgment was improperly granted.

For the above reasons we hold that Act No. 79-434 was valid in its entirety

and the order of the trial court must be and is hereby reversed and remanded.

REVERSED AND REMANDED.

All the Justices concur.

## Appendix (ii)

IN THE CIRCUIT COURT
OF MONTGOMERY COUNTY, ALABAMA

EXCHANGE OIL AND GAS COPRORATION [sic],
Plaintiff,

versus

RALPH EAGERTON, Commissioner of Revenue of the State of Alabama,
Defendant.

CIVIL ACTION NUMBERS:

CV-79-1284-H
CV-79-1362-H
CV-79-1363-H
CV-79-1397-H
CV-79-1529-H
CV-79-1338-H
CV-79-1583-H
CV-79-1622-H
CV-79-1508-H
CV-79-1509-H
CV-79-1510-H
CV-80-006-H
CV-80-165-H
CV-80-166-H
CV-80-167-H
CV-80-168-H
CV-80-121-H
CV-80-421-H
CV-80-863-H
CV-80-351-H
CV-80-714-H
CV-80-509-H
CV-80-074-H
CV-80-224-H
CV-80-225-H
CV-80-226-H
CV-80-227-H
CV-80-228-H
CV-80-229-H
CV-80-564-H
CV-80-565-H
CV-80-566-H
CV-80-567-H
CV-80-568-H
CV-80-569-H
CV-80-517-H
CV-80-518-H
CV-80-519-H
CV-80-520-H
CV-80-780-H
CV-80-781-H
CV-80-782-H
CV-80-783-H

OPINION AND ORDER

This matter came on to be heard on May 26 and 27, 1980, in open Court. The evidence was adduced by testimony of the parties and witnesses, by stipulations of fact, by depositions and exhibits. The case has been fully briefed and argued by counsel. The Court notes that most of the material and relevant facts are not in dispute, many of which have been stipulated between the parties. While timely objections were made by counsel as to the admissibility of certain evidence, the Court has considered only that evidence which is material and relevant. After having considered the pleadings, briefs, evidence, and arguments of the parties, it is the judgment and opinion of the Court

that the relief prayed for by the Plaintiffs should be granted, that Act 434 of the Regular Session of the Alabama Legislature of 1979 be stricken as null, void and unconstitutional in all respects and of no further force or effect, and that the Plaintiffs herein are entitled to a refund of taxes paid by them pursuant to the provisions of Act 434. These cases are somewhat complicated and involved by the fact that 42 separate and independent cases involving fourteen Plaintiffs were consolidated for discovery and trial. While each of the Plaintiffs sought a refund of taxes paid under Act 434, and while there were common issues presented by all Plaintiffs, certain contentions of the parties Plaintiffs were different from others in certain of the cases and there were different party Defendants in

some cases. The Defendant, Ralph Eagerton, Commissioner of Revenue, was a common Defendant in all cases.

## I. INTRODUCTION

These 42 consolidated cases seek to have the Court construe Act 434, 1979 Session Alabama Legislature, declare it unconstitutional and order a refund to the various Plaintiffs of the 2% increase in severance taxes paid by them under protest to the State of Alabama on their production of oil and gas within the State of Alabama.[1]

Act 434 was signed into law by the Governor on July 19, 1979, and became effective pursuant to its terms on September 1, 1979. The Act attempts to impose an increase in severance taxes of 2% (from 4% to 6%) on certain oil and gas

production by amendment of Section 40-20-2, Code of Alabama 1975.

The contentions of Plaintiffs focus primarily upon four provisions of Act 434. One is the "Smackover Proviso" which appears as the last sentence of that portion of the Act that increases the tax rate from 4% to 6%. The Smackover Proviso reads as follows:

> Provided, however, that said additional increase shall be limited to those oil and gas wells from between 15,000 and 15,800 feet in the smackover formation.

The Smackover formation is an ancient geological formation which underlies twelve counties in southwest Alabama. It extends from Mississippi and other westward states across southwest Alabama into northwest Florida. The only county in Alabama having production from the Smack-

over formation from depths between 15,000 and 15,800 feet is Escambia County.[2] This was true on September 1, 1979, when Act 434 purportedly became effective; it is also true now. Plaintiffs' contentions also focus on the "Royalty Owner Exemption" of the Act, which reads as follows:

> Any person who is a royalty owner shall be exempt from the payment of any increase in taxes herein levied and shall not be liable therefor.

Another such provision is the "Pass-Through Prohibition," which reads as follows:

> The privilege tax herein levied shall be absorbed and paid by those persons engaged in the business of producing or severing oil or gas only, and the producer shall not pass on the costs of such tax payments, either directly or indirectly, to the consumer; it being the express intent of this act that the tax herein levied shall be borne exclusively by the producer or severer of oil or gas.

The fourth provision is the "Twenty-Six Barrel Provision" which reads as follows:

> All wells producing less than 26 barrels of oil per day shall be taxed at the rate of four per centum (4%) of the gross value of said oil or gas at the point of production.

Generally stated, Plaintiffs contend the following:

(1) The Smackover Proviso causes Act 434 to be a "local" law; the Act, therefore, violates several provisions of the Alabama Constitution pertaining to "local" laws.

(2) Act 434 violates Section 45 of the Alabama Constitution because it contains more than one subject and the subjects are not clearly expressed in the title to the Act.

(3) Act 434 lacks uniformity and establishes arbitrary classifications in violation of the equal protection and due

process requirements of the Federal and Alabama Constitutions.

(4) Act 434 is void because it is so uncertain, ambiguous and conflicting as to be incapable of rational interpretation and equitable enforcement.

(5) Act 434 is unconstitutional under the Federal and the Alabama Constitutions because it impairs contractual obligations.

(6) Even if Act 434 is valid, it does not obligate some of Plaintiffs to pay the tax increase because (a) by virtue of the Smackover Proviso the tax is levied only on oil and gas production from this formation between the depths of 15,000 and 15,800 feet, and (b) by virtue of the Twenty-Six Barrel Exemption, by which wells producing less than twenty-six barrels of oil per day, are exempted from

the tax increase. Thus, the production of various Plaintiffs is not subject to the tax increase.

Defendant contends that the Act increases the severance tax statewide and that the Smackover Proviso applies only to new wells between 15,000 and 15,800 feet in the Smackover formation. Defendant also contends that the other provisions of the Act and the Act itself will pass all constitutional tests.

Therefore, the parties' contentions are diametrically opposite. A cursory examination of the Act reveals several apparent conflicts and repugnancies that are apparent to the face of the Act. These include but are not limited to: the apparent impairment of contracts resulting from the new Royalty Owner Exemption and the new Pass-Through Prohibition; the

taxation of royalty interest and the exemption of royalty owners within the Act itself; the apparent conflict with existing Code provisions such as Sections 40-20-1 and 40-20-3; the questionable different treatment of royalty owners with the "old" tax and the "new" tax; and the confusion between the parties relative to the meaning and effect of the Smackover Proviso.

The Court's first impression is that the Smackover Proviso clearly limits the increase from 4% to 6% to only those wells lying within the indicated depth interval and which are located in and producing from the Smackover formation. The insistence by the State to the contrary, and the contrary interpretation by the State, leads this Court to look into the history of the Act since the Court's

function is to construe the Act according to the Legislature's intent. From the history and other evidence set out in detail below, it is without any reasonable dispute that the Legislature intended (1) to tax Smackover wells in Escambia County by an additional 2%; (2) to exempt the royalty owners of those Smackover wells from the increased tax burden and (3) to impose the tax increase solely on the producers.

## II. FACTS

### A. Plaintiffs' Oil and Gas Production and Contracts

Each of the Plaintiffs is engaged in exploring and prospecting for oil and gas within the State of Alabama.[3] The Plaintiffs have successfully completed

wells producing oil or gas in paying quantities within the State of Alabama.

Only the Plaintiffs Gulf, Exxon and LL&E, have production in the Smackover formation in the interval between 15,000 and 15,800 feet. All of the other Plaintiffs' production is in other formations and/or at other depths.

Each of the Plaintiffs' respective wells is located within what is known as a drilling and producing "unit," the size and configuration of which is established under Alabama law by the State Oil and Gas Board of Alabama, Section 9-17-1, et seq. Code of Alabama 1975. Plaintiffs do not own all of the production attributable to the unit wells located in each of their producing units. The units generally consist of several separate tracts of land which have been leased directly to the

Plaintiffs or assigned to the Plaintiffs by assignees and successors of the original lessee. Production of oil or gas from the unit is allocated to the several owners based upon their pro rata ownership within the unit boundaries established by the Oil and Gas Board. The landowners are entitled to a certain percentage of the unit's total production known as royalty which varies from lease to lease, as established by negotiations between the parties, and may vary from 12-1/2% to as high as 54%, of the oil or gas produced. The owner of this royalty has the right under the lease contract to elect to take his royalty "in kind." Severance taxes under the terms of the leases are to be borne pro rata by both the lessor and the lessee.

Additionally, there are tracts covered by leases within any given production unit which the Plaintiffs do not own, but which are owned by other lessees or their assigns. The Plaintiffs, as operators of the well, are authorized to sell and do sell the oil or gas to third party purchasers and distribute the proceeds of the sale pro rata to each owner in the unit, including the royalty owners. Thus, the Plaintiffs, as unit operators of the wells, handle the production and sales proceeds from production for and on behalf of all owners in the unit, including landowners and royalty owners (which includes royalty sold by landowners to others who do not own title to the mineral fee and/or royalty carved out of the working interests of leases and reserved

by the assignors of other lessees) and other lessees.

The sales contracts of the various Plaintiffs entered into prior to the effective date of the Act all provide, to one extent or another, that severance taxes or increases thereof shall be borne by the purchaser.

In addition to the Smackover Proviso set forth above, the Plaintiffs also contest the validity and constitutionality of the Royalty Owner Exemption and the Pass-Through Prohibition.

In addition to the legal and constitutional objections and contentions made on behalf of all of the Plaintiffs, some of the Plaintiffs (Terra Resources, Inc., Petroleum Corporation of Texas, Warrior Drilling and Engineering Co., Inc., Anderman Operating Company and Pruet

Production Company) claim, in addition, that the tax does not apply to most of their production, because most of the wells operated by them produce less than 26 barrels of oil per day. Their claim to this exemption is made under and pursuant to the following provision of the Act:

> All wells producing less than 26 barrels of oil per day shall be taxed at the rate of 4% of the gross value of said oil or gas at the point of production. (Emphasis supplied.)

Each of these five Plaintiffs has proven that most of their wells produce less than 26 barrels of oil per day and are entitled to judgment in any event.[4]

B. Legislative History

The Act was initially introduced in the House of Representatives by Representative Hines of Escambia County,

Alabama, as a bill of statewide application, increasing severance taxes from 4% to 6% on all production within the State. The bill was thereafter referred to the House Ways and Means Committee. Just prior to consideration of the bill as H.B. 148 (subsequently enacted as Act 434) by the Ways and Means Committee, the sponsor, Mr. Hines, amended the bill by adding the Smackover Proviso, the Royalty Owner Exemption and the Pass-Through Prohibition.

The testimony and evidence presented at trial show that Representative Hines appeared before the House Ways and Means Committee on or about June 6, 1979, presented his amended bill and represented to the Committee at that time that the bill had application only to Escambia County. Accordingly, he asked the

Committee for "local courtesy," meaning that the other members of the Committee would be expected to vote favorably for the measure, since it did not affect their counties. During the debate and presentation before the House Ways and Means Committee, Representative Hines stated that H.B. 148, as amended, was applicable only to oil and gas production in the subsurface interval between 15,000 and 15,800 feet in the Smackover formation. He further stated that the only production in the State at these depths was located in his own County, Escambia County, and for these reasons, he was, therefore, asking for local courtesy. Mr. Hines, during debate before the House Ways and Means Committee, was specifically asked by a member of that Committee, Representative Sandusky, whether the bill

applied only to Escambia County to which he replied in the affirmative. Later, on July 12, 1979, when the bill was presented on the floor of the House of Representatives, Mr. Hines made similar representations to the members of the House.

In addition, throughout its passage through the legislative process, the bill was treated as a local bill and was taken up out of order on the calendar for this reason. When the bill reached the Senate, Representative Hines again made representations before the Senate Finance and Taxation Committee of a similar nature, representing the bill as only taxing production in the stated interval. Similar representations were also made on the floor of the Senate where the bill was amended to include Section 3, the

severability clause. Finally, Mr. Victor Vernon, Assistant Director of the Legislative Fiscal Office, prepared an official memo which indicates that the Secretary of the Department of Revenue was apprised of the Act's local and restricted application as affecting only Escambia County and he advised Mr. Vernon that the revenue estimates should be changed to "reflect the Escambia County interpretation."

Significantly, after the bill was amended to include the Smackover Proviso, the Legislative Fiscal Office reduced its estimate of revenues to be generated by the Act from $5.4 million to $1.7 million. The reduced estimate was based on the oil and gas produced only in Escambia County,

whereas the earlier fiscal note had been based and calculated on statewide production. These Fiscal Notes were physically attached to the amended bill as required by the rules of both the House and the Senate.[5]

After the Bill was enacted, the Department of Revenue, in two memoranda released by it to the Alabama Petroleum Council, determined that it would interpret the Act as a statewide Act.

## III. INTERPRETATION OF SMACKOVER PROVISO

### A. General Interpretation

In light of the opposing contentions advanced by Plaintiffs and Defendant, it is necessary preliminarily to interpret the scope of the Smackover Proviso. That provision, the final sentence in the first paragraph of the statute (which increases

the tax rate from 4% to 6%), reads as follows:

> Provided, however, that said additional increase shall be limited to those oil and gas wells from between 15,000 to 15,800 feet in the smackover formation.

Plaintiffs contend that the Smackover Proviso applies to, and limits the imposition of, the basic tax increase (from 4% to 6%). Defendant contends that the Smackover Proviso does not apply to the basic tax increase but instead modifies only the immediately preceding sentence which states that "(t)en years after production begins, such tax shall then be imposed at the rate of six per centum (6%) on such wells that go into production after the effective date of this act."

For several reasons it is clear that the Smackover Proviso applies to the basic

tax increase from 4% to 6% and that Plaintiffs are correct in their interpretation.

The word "increase" appears at three places in the Act, and it is appropriate that this word have the same meaning in all three places. One place is the Smackover Proviso. Another place is the title of the Act which states that one of the Act's purposes is "to increase the rate of tax." As used in the title, the word "increase" is a clear reference to the basic increase in tax rate from 4% to 6%. The third place where the word "increase" appears is the Royalty Owner Exemption which reads as follows:

> Any person who is a royalty owner shall be exempt from the payment of any increase in taxes herein levied and shall not be liable therefor.

in that provision the word "increase" also refers to the basic increase in tax rate from 4% to 6%. In fact, the Department of Revenue has so interpreted the provision. A memorandum from the Legal Division of the Department of Revenue was introduced for the purpose of showing the Department's interpretation. The memorandum states the following concerning the effect of the Royalty Owner Exemption:

> However, since the royalty-interest owner's share is exempt from "the payment of any increase in taxes" levied in Act 434, the producer may not deduct from the royalty-interest owner's portion any amount which would represent the 2% increase in taxes levied by Act 434.

Additionally, the Smackover Proviso appears as a completely independent sentence, not a mere clause appended to the immediately preceding sentence. This indicates that the Smackover Proviso was

intended to have much broader application than merely to the immediately preceding sentence. Moreover, the Smackover Proviso was not a part of the original bill but was inserted later by amendment. Because it was inserted by amendment both as a completely independent sentence and at the very end of the paragraph in which it appears, it is clear that the sentence was intended to apply to, and restrict, the basic increase in tax rate imposed by the paragraph.[6] Also, because both the Smackover Proviso and the Royalty Owner Exemption were inserted by amendment at the same time, the word "increase" appearing in both provisions should have the same meaning. Provisos which follow after a statute's enacting clause are to be given a rational interpretation in harmony with the general purpose and

intent of the statute, with a view to carrying into effect the purpose of the law. Chandler v. Waugh, 290 Ala. 70, 274 So.2d 46 (1973). The appropriate office of a proviso is to restrain and modify the enacting clause and preceding matters and where it is manifest that the intent was that it apply to other portions, it will be construed to restrain or qualify even other and separate sections and paragraphs of the Act. Wartensleben v. Haithcock, 80 Ala. 565, 1 So. 38 (1887); and Cooper v. State, 28 Ala. App. 422, 187 So. 500 (1939). Such is the case here, the location of the proviso, as underscored by the legislative history, restricts the tax increase to wells at the stated depths in the stated formation and, therefore, does not levy a tax on the production of the Plaintiffs, Union, Getty, Exchange,

Placid, Terra, Citmoco, Pruet, Warrior, Anderman, Midroc, and Petroleum Corporation of Texas; but does, if constitutional, purport to tax the production of Exxon, LL&E and Gulf.

If there is any merit at all to Defendant's contention, the statute at best would be ambiguous when viewed from Defendant's standpoint. Such an ambiguity would bring into play the familiar rule of interpretation that "construction of it must be against taxing power and in favor of taxpayer." Butler & Kennamer Wholesale Company v. State, 293 Ala. 216, 301 So.2d 178 (1974); State v. Alabama Leasing Company, 336 So.2d 1353 (Ala. 1976).

Even without considering the Act's legislative history it is clear that the Smackover Proviso applies to the basic tax

rate increase from 4% to 6%, and the Court so holds. The legislative history, if taken into account, unmistakably confirms the correctness of this holding.

The legislative history as shown by the testimony and evidence at trial make the conclusions reached in this respect crystal clear. This Court has not considered any evidence relating to the "motive" or "reasons" of the Legislature or any conclusions of legislators regarding their "motives" or "opinions" as condemned in James v. Todd, 267 Ala. 495, 103 So.2d 19 (1957). The actual testimony of the bill's sponsor, his explanation and representations with regard to the bill's scope, both before the Committees and on the floor of both houses, is both relevant and competent evidence. Courts generally have looked to statements of the sponsor

of the bill, the committee member in charge of the bill and to the draftsman's understanding of the bill's nature and effect in determining legislative intent. Sutherland, Statutory Construction, § 4814, § 4815 and § 4810 (4th ed. 1973). In the course of deliberations on any bill, legislators naturally look to its sponsor, as well as to the representative of the Committee in charge of it, as one who is expected to be particularly well informed about its purpose, meaning and intended effect; and in recognition of this reality of legislative practice, courts give weight and consideration to statements made by such parties. 2A Sutherland, §§ 4814, 4815. In this same connection Sutherland further states:

> . . . if the draftsman's views were clearly and prominently communicated to the legislature when the bill was

> being considered for enactment, so as to give reason to believe that the legislators' understanding of the bill would have been influenced by the draftsman's communicated views and so as to be visible to others who are concerned to understand the meaning of the act, there is reason to invoke an exception to the general rule and attach weight to the draftsman's views. Sutherland, supra, at § 4812, p. 215.

The courts have consistently followed this general rule.[7] The Supreme Court of Alabama has held in a number of cases that legislative history is relevant and admissible. Thus in State Docks Commission v. State ex rel. Jones, 227 Ala. 521, 150 So. 537 (1933), the Supreme Court specifically referred to a number of aids to ascertain the legislative intent, including the legislative journals, the fact that the Standing Committee on Finance and Taxation had reported the bill to the Senate, the fact that a substitute

bill had been referred to and reported on by the Standing Committee on Appropriations; the fact that the Standing Committee on Enrolled Bills had given a specific report and a message from the House to the Senate. To the same effect see also, Southern Express Co. v. I. Brickman & Co., 187 Ala. 637, 65 So. 954 (1914); American Bakeries Co. v. City of Opelika, 229 Ala. 388, 157 So. 206 (1934); Houston County v. Martin, 232 Ala. 511, 169 So. 13 (1936); and State v. T. R. Miller Mill Co., 272 Ala. 135, 130 So.2d 185 (1961). Likewise in Morris v. State, 271 Ala. 290, 122 So.2d 914 (1960), the Supreme Court said:

> In construing statutes, it is our duty to examine the legislative history in order to ascertain the true intent of the lawmaking body. 271 Ala. at 292, 122 So.2d at 915 (Emphasis supplied).

Even more significant is the decision in the Supreme Court in Morgan v. Board of School Commissioner of Mobile County, 248 Ala. 22, 26 So.2d 108 (1946), where the court held as follows:

> In addition to the historical background shown by the foregoing enactments, the words of the members of the Constitutional Convention of 1901 uttered on the floor of the convention are helpful in arriving at a correct construction of Section 270 of the Constitution of 1901. 248 Ala. at 25, 26 So.2d at 110. (Emphasis supplied)

In the Morgan case, the court then went on to examine and rely upon statements made by members of the convention in rendering its determination and quoted in extenso the exact language used by certain members during floor debate. Of similar import is the case of Ex parte Southern Bell Tele. & Tele. Co., 267 Ala. 139, 143 99 So.2d 118,

121 (1957), where the court noted that "[a]lthough the debates of the constitutional convention are not binding on this court, they are highly persuasive. . . ." Thus, the fact that the portions of the statute under consideration which are in contention, were offered by amendment within the Committee on Ways and Means of the House of Representatives, the fact that its sponsor on the floor of the House and in committee repeatedly explained and represented the bill as affecting only the production in the stated interval and geological formation, the fact that the Alabama Fiscal Office in performance of its statutory duty projected and estimated revenues on a local basis (i.e., Escambia County production of oil and gas) and attached that Fiscal Note to the bill itself as required by the

rules of the House and Senate, and the other facts considered by the Court are all relevant legislative history to establish with overwhelming clarity the intention of the legislature and the intent of the bill itself. It is a bill which purports only to tax production in the stated interval, and no other area in the state on the effective date of the Act or at the present time is producing from those intervals except Escambia County.

## IV. ACT 434 IS A "LOCAL" LAW AND, AS SUCH, VIOLATES THREE PROVISIONS OF THE ALABAMA CONSTITUTION

### A. Smackover Proviso Makes Act 434 a "Local" Law

Having found that the increase of 2% attempted to be levied by Act 434 taxes and applies only to the production of oil

and gas now located in Escambia County with no effect or impact upon production elsewhere in the State, the question arises as to the validity and constitutionality of a taxing statute which taxes the production of only one county or, at the best, production from a portion of one subsurface stratum or formation. By definition, a "local" law is one which applies to a portion of the state, but not the entire state. A law which applies only to one county, or only to several counties, is a "local" law. In light of this definition, the Smackover Proviso clearly makes the Act a "local" law.

Section 110, Article IV of the Alabama Constitution, as amended by Amendment No. 375, defines a "local" law as being one which is not a private law or a "general" law, and defines a "general"

law as being one which applies "to the whole state" (or, although not relevant here, to one or more municipalities).

Alabama cases establish that a "local" law need not apply to just one county or one political subdivision, but that the law will be "local" even if the affected area encompasses portions of several political subdivisions, so long as the entire state is not affected. State ex rel. Attorney General v. Sayer, 142 Ala. 641, 39 So. 240 (1904); Opinion of the Justices, 278 Ala. 98, 176 So.2d 29 (1965); State v. Lash, 350 So.2d 748 (Ala. Cr. App. 1977).

The Smackover Proviso restricts the scope of the tax increase by providing that "said additional increase shall be limited to those oil and gas wells from between 15,000 and 15,800 feet in the

smackover formation." There are two different but related reasons why the Smackover Proviso causes Act 434 to be "local." The first is that as a matter of unchanging geological fact the Smackover formation underlies only twelve counties in Alabama; hence, it is inconceivable that Act 434 can apply to the entire State because fifty-five of the Counties are not even underlain by the Smackover formation.[8] A separate but related reason why Act 434 is "local" is that, when the Act became effective, only Escambia County had production from the Smackover formation at 15,000 to 15,800 feet.[9] While it is conceivably true that one of the other southwest Alabama counties could at some future date have production from the Smackover formation at 15,000 to 15,800 feet (although this has not yet occurred),

the Supreme Court of Alabama has made it clear that the significant time for determining whether an act is local is the effective date of the Act. In Peddycoart v. City of Birmingham, 354 So.2d 808 (Ala. 1978), the Court stated that Section 110 of the Alabama Constitution (defining "local" laws) is applicable "when it [the bill] becomes law," and that "[i]f, when it becomes law it applies only to a subdivision of the state, it is a local law." 354 So.2d at 814.

The Smackover Proviso's "local" scope is underscored by its "double classification" feature. Two criteria -- depth and formation -- are embodied in the phrase "wells from between 15,000 and 15,800 feet in the Smackover formation." The separateness of the criteria of depth and

formation is demonstrated by the fact that there are a number of wells in the Smackover formation at shallower and deeper depths and the fact that at 15,000 to 15,800 feet there is production from a formation other than the Smackover (namely the Norphlet formation).

In a number of decisions, the Supreme Court of Alabama has condemned "double classification" as simply being a "designation" of a particular locality to which the statute would apply. The following language appears in Ward v. State ex rel. Lea, 224 Ala. 242, 139 So. 416 (1932);

> We have condemned double classification which tended to confine the operation of the law to one particular locality. . . for such a law results in a designation rather than classification.

224 Ala. at 244, 139 So. at 417. In State ex rel. Saltsman v. Weakley, 153 Ala. 648, 45 So. 175 (1907), the Court considered a statute which pertained to "cities of 35,000 population, or more, in counties of 125,000 or more population." 153 Ala. at 650, 45 So. at 175. The criteria concerning both cities and counties were utilized. The Court stated that "[w]e find no case in the books upholding, as a general law, an Act with a double or reclassification, such as the one in question." The Court held that the statute was "local" and that it violated Section 106 of the Alabama Constitution because no notice was published or posted as required for "local" laws. Other relevant Alabama cases in accord with Ward and Weakley are McCoy v. Jefferson County, 232 Ala. 651, 169 So. 304 (1936); Henry v.

Wilson, 224 Ala. 261, 139 So. 259 (1932); and State ex rel Conrad v. Board of Road Commissioners, 231 Ala. 18, 163 So. 345 (1935).

Consequently, the Smackover Proviso unquestionably causes Act 434 to be a "local" act subject to several requirements imposed by the Alabama Constitution concerning the enactment of local legislation.

B. Section 106 -- Publication Requirement

Section 106 of Article IV of the Alabama Constitution provides that "(n)o special, private, or local Act shall be passed on any subject. . .unless notice of the intention to apply therefor shall have been published" according to the requirements of Section 106. An Act which

is "local" and which was passed without compliance with Section 106 is unconstitutional. Opinion of the Justices, 356 So.2d 118 (Ala. 1978); Couch v. Rodgers, 253 Ala. 533, 45 So.2d 699 (1950).

It is undisputed that notice of the intention to apply for the legislation resulting in Act 434 was not published or posted in accordance with requirements of Section 106 of the Alabama Constitution. For this reason Act 434 is void.

C. Section 111 -- Change on Passage to Become "Local" Law

Section 111 of Article IV of the Alabama Constitution provides that "(n)o bill introduced as a general law in either house of the legislature shall be so

amended on its passage as to become a special, private or local law."

As the legislative history reveals, the original bill imposed a tax increase in respect of statewide oil and gas production. By virtue of the Smackover Proviso which was inserted when the bill was amended, the Act imposed the tax increase only in respect of production from 15,000 to 15,800 feet in the Smackover formation.

Accordingly, the bill was "introduced as a general bill" and was "so amended on its passage as to become a . . . local law" in violation of Section 111. It is, therefore, unconstitutional. See Opinion of the Justices, 284 Ala. 626, 627, 227 So.2d 396, 397 (1969).

D. Section 105 -- Subject "Provided for by a General Law"

By virtue of Section 105 of Article IV of the Alabama Constitution, no "local" law "shall be enacted in any case which is provided for by a general law. . . ."

In Peddycoart v. City of Birmingham, 354 S-. [sic] 2d 808 (Ala. 1978), the Court held that Section 105 was violated because the statute in question was a "local" law which covered a subject that was "provided for by a general law." The "local" law applied only to Birmingham by virtue of a population classification; it conferred on the city a type of immunity in tort. General statutes already dealt with the matter of municipal liability in tort. In addressing the question whether the subject was "provided for by a general law," the Court repudiated three different

ways in which the Court in a number of prior cases had gotten around Section 105. Then the Court concluded that the presence of a general law is "primary, and means that a local law cannot be passed upon that subject." 354 So.2d at 813. (emphasis original) While the Court made its decision prospective rather than retroactive, it indicated clearly that general law on the subject of "municipal liability in tort" precluded, by virtue of Section 105, a local law conferring immunity on a particular city.

Since Peddycoart the Court has considered Section 105's application to "local" law in several cases. In Opinion of the Justices, 354 So.2d 148 (Ala. 1978), the Court advised the legislature that a proposed bill purporting to exempt Choctaw County from the statewide

requirement that county engineers be qualified land surveyors was unconstitutional, holding that the bill would be a "local" law operating "on a subject already subsumed by a general law and [would] violated Section 105." 357 So.2d at 149. In ABC Bonding Co. v. Montgomery County Surety Commission, 372 So.2d 4 (Ala. 1979), the Court held that a statute revising bail practices in the Fifteenth Judicial Circuit was unconstitutional under Section 105 because a statute of statewide application covered many of the same points. In Yancey & Yancey Construction Co. v. Dekalb County Commission, 361 So.2d 4 (Ala. 1978), the Court considered a contention that the local law violated Section 105 because it permitted a coal severance tax for Dekalb County when general statutes already

levied a coal severance tax statewide. Because the Act in Yancey was passed before Peddycoart, the Court pointed out that the holding in Peddycoart "was expressly limited to legislation enacted after the date of that opinion" and stated that, therefore, the rules which were applied prior to Peddycoart must govern. 361 So.2d at 5. Applying the pre-Peddycoart rules, the Court concluded that the local severance tax statute was not proscribed by Section 105. However, it is clear that the result would have been different if the local Act had been enacted after the decision in Peddycoart.[10]

As a "local" law, Act 434 clearly violates Section 105 because an oil and gas severance tax was already "provided for by a general law." Existing statutes already imposed a statewide oil and gas

severance tax. Peddycoart clearly indicates that this statewide severance tax was a "general law" which precluded a "local" law increasing the tax in a portion of the state.

## V. ACT 434 LACKS UNIFORMITY AND ESTABLISHES ARBITRARY CLASSIFICATIONS IN VIOLATION OF THE EQUAL PROTECTION AND DUE PROCESS REQUIREMENTS OF THE FEDERAL AND STATE CONSTITUTIONS

As indicated above, the Plaintiffs have completed and operate wells producing oil or gas in commercial quantities in drilling and producing units established by the State Oil and Gas Board of Alabama. These duly established drilling and producing units consist of various tracts and interests not all of which are covered by leases owned by or assigned to the various Plaintiffs. Under the terms of

the leases owned by the respective Plaintiffs, severance taxes are to be borne on a pro rata basis by both the lessee and lessor/royalty owner.

The Royalty Owner Exemption is contained in paragraph 1(d) of the Act and provides as follows:

> Any person who is a royalty owner shall be exempt from the payment of any increase in taxes herein levied and shall not be liable therefor. (Emphasis supplied).

The Defendant has construed and is enforcing the Act so that the 2% increase cannot be deducted from the royalty owner's share.[11] Section 1(e) of Act 434 contains the "Pass-Through Prohibition" and provides that:

> The privilege tax herein levied shall be absorbed and paid by those persons engaged in the business of producing or severing oil or gas

> only, and the producer shall not pass on the costs of such tax payments, either directly or indirectly, to the consumer; it being the express intent of this section that the tax herein levied shall be borne exclusively by the producer or severer of oil or gas.

The Defendant has construed "the intent of the Legislature" with respect to Section 1(e) so as to prohibit the severance tax from being passed on to any party.[12] Thus, the combined effect and impact of the Royalty Owner Exemption of paragraph 1(d) and the Pass-Through Prohibition contained in paragraph 1(e) is that the "producer" is required to bear and absorb a portion of the tax attributable to production of the mineral owner and, purportedly, cannot charge or pass on any portion of the tax to any party.

The statutory scheme created by Section 40-20-1, et seq. Code of Alabama 1975 clearly imposes a tax upon producers in direct proportion to their ownership. It is by its terms a tax on mineral ownership of producing mineral interests, whether the interest is a leasehold (working interest), royalty or overriding royalty interest, which is in lieu of ad valorem taxes. § 40-20-12, Code of Alabama 1975.

A "producer" is defined by the terms of Section 40-20-1(8) as follows:

> (8) PRODUCER. Any person engaging or continuing in the business of oil or gas production, which, for the purpose of this article, includes the owning, controlling, managing, or leasing of any oil or gas property or oil or gas well, and producing in any manner any oil or gas by taking it from the soil or waters, or from beneath the soil or waters, of the state of Alabama, and further includes receiving money or other

> valuable consideration as royalty or rental for oil or gas produced or because of oil or gas produced, whether produced by him or by some other person on his behalf, either by lease, contract or otherwise, and whether the royalty consists of a portion of the oil or gas produced being run to his account or a payment in money or other valuable consideration. (Emphasis supplied).

The fact that a royalty owner is considered and defined in this section to be a "producer" is given credence by the Defendant, at least in part, since the Defendant interprets this section in conjunction with Act 434 to require the royalty owner "as a producer" to bear its fair share of the 4% tax, but not its fair share of the 2% increase; and thus under the Defendant's interpretation, the royalty owner is considered partly as a producer and partly as a non-producer.[13]

Furthermore, Section 40-20-2(b) specifically provides that royalty is included within the tax base or classification in the following language:

> The tax is hereby levied upon the basis of the entire production in this state, including what is known as the royalty interest. . . . (Emphasis supplied)

Section 40-20-3, Code of Alabama 1975 imposes the tax on all producers in proportion to their ownership in the following language:

> (a) The privilege tax hereby imposed is levied upon the producers of such oil or gas in the proportion of their ownership at the time of severance, but, except as otherwise herein provided, the tax shall be paid by the person in charge of production operations, who is hereby authorized, empowered and required to deduct from any amount due to producers of such production at the time of severance the proportionate amount of the tax herein levied before making payments to such producers. . . .

(b) When any person in charge of production operations shall sell the oil or gas produced by him, the purchaser shall account for the tax.

(c) When any person in charge of production operations shall use or dispose of the oil or gas for fuel or any other purpose, he shall withhold the tax imposed by this article; and, if he is required to pay other interest holders, he is hereby authorized, empowered and required to deduct from any amounts due them the amount of tax levied and due under the provisions of this article before making payment to them. (Emphasis supplied).

The provisions of this Section clearly show that the tax is based and levied upon mineral ownership and is to be paid proportionately by the respective "owners" which is, in all respects, and by any yardstick, a fair, reasonable, equal and equitable classification for imposition of the tax.[14] In addition, Section 40-20-3(b) expressly provides that purchasers shall account to the State in

instances where the producer has contracted to sell oil and/or gas.

Finally, Section 40-20-12, Code of Alabama 1975 exempts all mineral rights in producing properties and all oil or gas under the ground on producing property from ad valorem taxes. Said section provides in pertinent part as follows:

> (a) All oil or gas produced, all leases in production, including mineral rights in producing properties, and all oil or gas under the ground on producing properties within the state of Alabama shall be exempt from all ad valorem taxes. . . .
>
> (b) For the purpose of this article, the area of a lease or leases, including all oil and gas rights considered to be in production, . . .shall include an oil or gas drilling unit as established by the state oil and gas board of Alabama and shall be exempt from ad valorem taxation because of production from any one well. (Emphasis supplied)

The provisions of this Section clearly indicate that the severance tax is

a substitute for and in lieu of ad valorem taxes based on ownership. Because of the fortuitous event of achieving actual production of oil and gas the owner's tax burden on his mineral interest as a landowner is automatically shifted to the "producer" who has brought in the well. Since the landowner would be liable for taxes on his minerals in the absence of production or if the well is a dry hole, it is, to say the least, arbitrary to exempt the landowner from his land taxes when and only when that mineral interest fortuitously produces oil or gas.

The foregoing statutory scheme, in conjunction with the Smackover Proviso, clearly indicates the intention to tax the entire production from wells in the stated depth interval in the stated geological formation from any given unit, with the

tax to be borne by "producers," including royalty owners, in proportion to their ownership. The Royalty Owner Exemption and Pass-Through Prohibition conflict with and are repugnant to this statutory design and result in unequal and discriminatory taxation. The attempt made in Act 434 to exempt royalty from the class of "producers" and require the operator/producer of the well to bear this additional burden is without precedent under the laws of any other oil producing state. Every other producing state taxes royalty proportionately on its share of its own production.[15] Neither has any other state ever attempted to preclude a producer of oil or gas from "passing through" any part of its overhead such as severance taxes.

The Royalty Owner Exemption exempts one share of a well's production from taxation while taxing the remaining owners' share of production. The Pass-Through Prohibition takes the process one step further and attempts to impose payment of the royalty owners' taxes on the share of production of producer without regard to the royalty owners' ownership in production from the same wells.[16] Since royalty is entitled to, in many cases, a considerable proportion of the production free and clear of drilling and development costs, the working interest owners (i.e., the parties taking the risk of drilling the well) is taxed unequally and unfairly since the classification of taxpayer (i.e., all owners of interests in production from a well except royalty owners) is discriminatory, unreasonable,

arbitrary, capricious, and unsupported by any reasonable or rational basis. There is no rational basis for requiring a producer to absorb and pay the taxes of landowner/royalty owners who own interests in production from the unit well. There likewise is no rational basis for imposing on that producer the entire tax burden by requiring that the producer shoulder this burden in deference to interstate pipeline purchasers/carriers. These provisions of the Act deny the Plaintiffs equal protection of the laws and manifestly impair and abrogate their contracts wherein their purchasers have agreed to pay and/or absorb the tax.

The 14th Amendment of the Constitution of the United States provides in pertinent part as follows:

> . . .nor [shall any state] deny to any person within its jurisdiction the equal protection of the laws.

The equal protection clause first was interpreted in 1873 in the Slaughter-House cases, 16 Wall. 36, 21 L.Ed. 394 (1873). In the case of Missouri v. Lewis (Bowman v. Lewis), 101 U.S. 22, 31, 25 L.Ed. 989, 992 (1879), the Supreme Court said:

> It [equal protection] means that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and under like circumstances.

Sections 1, 6 and 22 of the Alabama Constitution of 1901 combine to guarantee equal protection of the laws. Black v. Pike County Commission, 360 So.2d 303 (Ala. 1978); City of Hueytown v. Jiffy Check Co. of Alabama, 342 So.2d 761 (Ala. 1977).

There is no doubt that the guarantee of the equal protection clause applies to the exercise by a State of the power of taxation. Consequently, the taxing power of the state is limited where it seeks to impose upon members of a selected class a burden which is not shared by other members of the particular class. Hartford S.B.I. & Ins. Co. v. Harrison, 301 U.S. 459 (1937); State Board of Tax Commissioners v. Jackson, 283 U.S. 527 (1931); McCarthy v. Jones, 449 F. Supp. 480 (S.D. Ala. 1978); Weissinger v. Boswell, 330 F. Supp. 615 (M.D. Ala. 1971). In this regard, the Supreme Court of the United States stated as follows in Louisville Gas & Electric Co. v. Coleman, 277 U.S. 32 (1928):

> . . .the equal protection clause means that the rights of all persons must rest upon the same rule under

> similar circumstances, . . ., and that it applies to the exercise of all the powers of the state which can affect the individual or his property, including the power of taxation. 277 U.S. at 37.

In Coleman, the Court, in striking down a statute imposing a tax on the recordation of mortgages but exempting mortgages executed to building and loan associations from the application of the tax liability, made the following statement concerning classifications:

> . . .[T]he classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.' . . . This is to say, mere difference is not enough: the attempted classification 'must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, . . .' 277 U.S. at 38.

The Alabama cases are uniform in striking down taxing ordinances and statutes where one segment of the general class sought to be taxed is exempted from taxation without any rational reason. Decisions of the Supreme Court of Alabama are particularly relevant to the situation at hand, and, by analogy, demonstrate the arbitrariness and capriciousness of the Royalty Owner Exemption and Pass-Through Prohibition.

In Alabama Consolidated Coal & Iron Co. v. Herzberg, 177 Ala. 248, 59 So. 305 (1912), the Court held a tax statute unconstitutional because the tax was "not . . . imposed upon the business, or upon all engaged in a similar business, but [was] based solely upon the manner in which a party may conduct the business." 177 Ala. at 250. The statute taxed

persons conducting "a commissary at which their employees trade on checks, orders or other devise. . . ." In City of Mobile v. La Clede Hotel Company, 221 Ala. 531, 129 So. 477 (1930), the Court held a tax ordinance to be arbitrary and capricious, and, therefore, invalid where it attempted to tax all hotels but exempted hotels of 15 rooms as well as hotels of 30 to 35 rooms. In this connection, the Court said as follows:

> But to sustain the ordinance there must be uniformity of the tax burden upon those in the same class, there must be no fanciful or capricious classification. . .[t]his ordinance offends this well-recognized principle. Though disclosing a general purpose to tax all hotels by classification as above outlined, yet there is discrimination in that hotels of fifteen (15) rooms, and those of thirty (30) to thirty-five (35) rooms are not taxed. They are omitted from the schedule. . . . We can, of course, conceive of no substantial basis for such exemption classification, and none is here

> suggested. It must therefore be condemned as arbitrary and capricious, and thus invalidate the ordinance. 221 Ala. at 532.

Of similar import is the decision in Woco Pep. Co. of Montgomery v. City of Montgomery, 213 Ala. 452, 165 So. 214 (1925) where the Court held a taxing ordinance to be invalid because it was arbitrary and lacked "legal equality." In that case the ordinance sought to tax parties engaged in the selling of motor fuels but purported to exempt local dealers although those purchasing from a non-resident dealer were taxed. More recently, in City of Birmingham v. Birmingham Business College, 256 Ala. 551, 56 So.2d 111 (1951), the Supreme Court struck down an ordinance which imposed license charges upon a "business college" but not upon other schools which were

conducted for profit but taught other types of subjects. The Court concluded the ordinance violated the Fourteenth Amendment, with the following language:

> We do not think it is a proper classification for license charges within the meaning of the Constitution to put schools conducted for profit and privately owned in different classes with respect to each other solely on account of a difference in the subjects taught in them, respectively. We think the business of conducting a private school for profit, if it is made the subject of a license tax, should include all such businesses, unless there is a status which supports a different exercise of the policy power and, if not so included, there is a discrimination within the equal protection clause of the Fourteenth Amendment.

A similar approach has been adopted in State v. Murphy, 45 Ala. App. 637, 235 So.2d 888 (1970).

The case of Al Means, Inc. v. City of Montgomery, 268 Ala. 31, 39, 104 So.2d 816 (1958), provides further guidance concern-

ing the validity of classifications. There the Court said:

> It is essential that the classification itself be reasonable and not arbitrary, and be based upon material and substantial distinctions and differences reasonably related to the subject matter of the legislation or considerations of policy, and that there be uniformity within the class.

In the context of Act 434, there can be no "material and substantial distinction" or reasonably related difference which justifies exempting the royalty share of oil and gas production from a well, which is free of risk and drilling cost, and at the same time taxing the share in production of working interest owners which bear the cost of production at least to the point of production. There is even less material and substantial distinction to justify the attempt in Section 1(e) of Act 434 to

require the producing party to absorb and bear the entire tax. There is absolutely no difference or distinction in the oil or gas emanating from the same well, in the same unit, which would in any way rationally dictate that one share of that production would be free of tax, with that tax to be absorbed by other parties engaged in the joint venture of drilling the well. The joint venture between the parties is that the landowner contributes and leases his minerals. The working interest owners contribute their money and take the risk that the well will not be a dry hole.

When Act 434 attempts to exempt royalty owners, which exemption is further compounded by the Pass-Through Prohibition preventing the producer from charging the increased tax burden to the purchaser, the

legal mandate requiring proportionate taxation is violated. The "producer" is required to pay a tax on the royalty owner's share of the production attributable to the royalty owner's ownership of the mineral fee and is restricted from passing on the unequal tax burden. The burden of the tax is, of course, magnified and progressively escalated depending upon the percentage of production to which the landowner is entitled. The evidence shows that some leases have royalty interest of as high as 54% and it is, to say the least, an irrational basis and an arbitrary classification to tax production in this manner. The lack of uniformity in this connection was discussed in Ohio Oil Co. v. Wright, 386 Ill. 206, 53 NE.2d 966 (1944) where the Court said:

> The legislature, however, regarded the production of oil as including all the oil, not only by prescribing a tax upon the entire ownership, but by declaring the tax to be on 'all oil . . . produced in this State.' The operators are, of course, in fact producing all this oil, but do not own all of it. When we must exclude royalty the test of ownership fails in uniformity, for one operator may produce $1,000 worth of oil and own seven-eights [sic] (7/8ths) of it, another produce a like amount and, by reason of overriding royalties own six-eights [sic] (6/8ths) of it, and another under an oil-payment contract, own none of it but have an exclusive right to oil in another tract not yet drilled. Under these diverse conditions the ownership test would exact, respectively, per $1,000 value of production, $26.25 from one, $22.50 from another, and nothing from the third, yet all would produce the same amount of oil in value. Thus the measure of the tax is not uniform in application to the member of the class engaged in the tax occupation of producing oil. 53 NE.2d at 973 (Emphasis supplied).

It is, therefore, clear that the attempt to exempt royalty and at the same time require that the "severer" (i.e., the persons in charge of production, i.e., who

are operators) bear and absorb all of a tax which is the legal equivalent of ad valorem taxes based on ownership, is arbitrary and capricious because it lacks uniformity of classification of those to be taxed. It is unequal and arbitrary to exempt one share of production and at the same time tax the remainder of the production from any given well or unit.

The foregoing authorities likewise condemn the classification of wells producing between 15,000 and 15,800 feet in the Smackover formation by virtue of the Smackover Proviso and the imposition of additional taxation on production from them. There is no way that the State can "demonstrate . . . that the classification is neither capricious nor arbitrary but rests upon some reasonable consideration of difference or policy." See Weissinger

v. Boswell, 330 F. Supp. 615 at 623 (M.D. Ala. 1971). The classification established in the Smackover Proviso is comparable to other classifications which have been held arbitrary and unconstitutional, such as the "business college" tax classification in Birmingham Business College, supra, the tax classification for hotels with 15 rooms and those with 30 to 35 rooms in La Clede Hotel Co., supra, the tax classifications in Woco Pep and Alabama Consolidated, supra, and the geographical tax classifications in Weissinger, supra, and McCarthy v. Jones, 449 F. Supp. 480 (S.D. Ala. 1978).

The evidence is undisputed that there is no rational basis for singling out wells producing from between 15,000 and 15,800 feet in the Smackover formation and

subjecting such wells to discriminatory taxation. The deeper the well, generally the greater the drilling and completion costs, pressure and temperature. Act 434 treats differently wells producing from the Smackover formation and wells producing from other formations, even if the production is from the same depth (as is the case with respect to the Norphlet formation wells of the Flomation Field in Escambia County). Act 434 treats differently wells producing from the Smackover formation at the 15,000 to 15,800 feet depth and wells producing from the same formation at greater depths (up to over 18,500) or at lesser depths (of about 10,000 feet). There is no difference geologically or otherwise in the characteristics of the wells, the formation(s), or the production to justify

the Smackover Proviso. The Defendant made no effort to prove otherwise.

For the foregoing reasons, I find that the Royalty Owner Exemption, the Pass-Through Prohibition and the Smackover Proviso separately and severally violate the Equal Protection Clause of the United States Constitution and the corresponding provisions of the Alabama Constitution. Therefore, Act 434 is unconstitutional and invalid.

## VI. ACT 434 IS UNCONSTITUTIONAL BECAUSE IT IMPAIRS CONTRACTUAL OBLIGATIONS

The Royalty Owner Exemption and Pass-Through Prohibition are invalid and must be stricken on a second ground because they each violate both the federal and state constitutions which expressly prohibit the State from "impairing the

obligations of the contracts." Article 1, Section 10, Constitution of the United States; Article 1, Section 22, Alabama Constitution of 1901. Plaintiffs have leases which require under their terms that the severance taxes be paid pro rata by the landowner, and these leases antedate the enactment of Act 434. In addition, the Plaintiffs have sales contracts entered into prior to the effective date of Act 434 which specifically allow and require that the severance taxes are to be paid and/or reimbursed by the pipeline purchaser. The Royalty Owner Exemption purports to excuse the landowner/royalty owners from payment of their proportionate share of the increase in severance taxes, while the Pass-Through Prohibition provides that the

tax must be borne and absorbed by the producer or severer of the oil or gas.

Article 1, Section 10 of the United States Constitution provides as follows:

> No state. . .shall. . .pass any law impairing the obligation of contracts.

Similarly, Section 22, Alabama Constitution of 1901, provides in relevant part as follows:

> That no. . .law impairing the obligations of contracts, . . .shall be passed by the legislature;. . .

The Supreme Court of Alabama long ago declared its opposition to governmental interference with private contracts under Article 1, Section 10 of the United States Constitution and in corresponding provisions of the State Constitution. In Edwards v. Williamson, 70 Ala. 145, 151, 153 (1881), the Court said as follows:

> The plain purpose of these constitutional barriers, we think, was to preserve the sacred principle of the involability of contracts against that legislative interference which the history of governments has sown to be so imminent, in view of the frequent engendering of popular prejudice, and the consequent fluctuations of popular opinion. . . .[T]he prohibition [in the constitution] has no reference to the degree of impairment. The largest and the least are alike forbidden. (Emphasis original).

More recent cases have continued to affirm this principle of law and the Supreme Court of Alabama, in White v. Associated Industries of Alabama, Inc., 373 So.2d 616 (Ala. 1979), relied upon Section 22 of the Alabama Constitution of 1901 to strike down a statute requiring private employers to pay their employees for military leave up to 20 days per year for National Guard or Reserve duty in violation of their employment contracts. In this connection the Court said:

> It is impermissible for the legislature as a means to accomplish a legitimate end -- continue public protection by encouraging participation in the Guard or Reserves -- to enact a statute impairing the obligation of employment contracts. The means are not reasonably adapted to the beneficial end, thus, the statute is in violation of constitutional provisions forbidding impairment of contracts. 373 So.2d at 620.

The federal cases are in accord. See Allied Structural Steel Co. v. Spannaus, 438 U.S. 234 (1978); United States Trust Co. v. New Jersey, 431 U.S. 1 (1977). See also Fleeman v. Case, 342 So.2d 815 (Fla. 1976); Allen v. Axford, 285 Ala. 251, 231 So.2d 122 (1969); Cole v. Pond Fork Oil and Gas Co., 35 SE.2d 25 (W. Va. App. 1945).

The law is clear and the facts dictate that the Royalty Owner Exemption and Pass-Through Prohibition impair the pre-existing contracts of these

Plaintiffs. Thus, on two grounds, equal protection and impairment of contract, the Royalty Owner Exemption and Pass-Through Prohibition must be stricken and held unconstitutional.

## VII. ACT 434 VIOLATES THE COMMERCE CLAUSE OF THE UNITED STATES CONSTITUTION

The Pass-Through Prohibition contained in Section 1(e) of Act 434 is invalid on a third ground because it violates the Commerce Clause of the United States Constitution. Article 1, Section 8, Clause 3 of the U. S. Constitution grants Congress the power to regulate commerce among the several states. This provision, commonly known as the Commerce Clause, reserves to the federal government the power to regulate interstate commerce and prohibits the states from directly

interfering with it or attempting to regulate it. In International Textbook Co. v. Pigg, 217 U.S. 91, 112 (1910), the Supreme Court stated as follows:

> It is the established doctrine of this court that a State may not, in any form or under any guise, directly burden the prosecution of interstate business. (Emphasis supplied)

See also Grandin Farmers' Co-op Elevator Co. v. Langer, 5 F. Supp. 425 (D.C.N.D. 1934), aff'd Langer v. Grandin Farmers' Co-op Elevator Co., 292 U.S. 605 (1934).

Related to the powers of Congress under the Commerce Clause are the provisions of Article VI of the United States Constitution which provides in pertinent part that:

> This Constitution, and the laws of the United States which shall be made in pursuance thereof, . . .shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution

> or laws of any state to the contrary notwithstanding.

In recognition of the authority of Congress under the Commerce Clause and the Supremacy Clause, the Supreme Court has frequently held that where Congress has adopted a comprehensive plan for regulating a particular aspect of interstate commerce, no power is left in the states to regulate that phase of interstate commerce in view of the all-embracing federal plan. Castle v. Hayes Freight Lines, Inc., 348 U.S. 61 (1954). This is particularly true where the state regulation conflicts with the federal plan of regulation. Burbank v. Lockheed Air Terminal, Inc., 411 U.S. 624 (1973).

On November 9, 1978, the Congress of the United States enacted the Natural Gas

Policy Act of 1978, 15 U.S.C. § 3301-3432 (Supp. 1979), establishing maximum lawful prices at the wellhead for all sales of natural gas, regardless of whether or not such sales are made in interstate or intrastate commerce. All sales of natural gas from wells within the State of Alabama became subject to the NGPA on December 1, 1978, the effective date of the Act. This Act provides in pertinent part as follows:

> . . .[A] price for the first sale of natural gas shall not be considered to exceed the maximum lawful price applicable to the first sale of such natural gas under this subtitle if such first sale price exceeds the maximum lawful price to the extent necessary to recover (1) State severance taxes attributable to the production of such natural gas and borne by the seller, . . .

The Act defines "state severance tax" for the purposes of the Act as:

> any severance, production, or similar tax, fee, or other levy imposed on the production of natural gas. . . .

These provisions unequivocally indicate that Plaintiffs, pursuant to their contract, are entitled to "pass through" increases in severance taxes. Thus, the Federal Government has pre-empted the field of cost and pricing of natural gas and precludes the State of Alabama from legislating in this field. Therefore, the Pass-Through Prohibition is unconstitutional and is void.

## VIII. ACT 434 VIOLATES SECTION 45 OF THE ALABAMA CONSTITUTION

Act 434 also violates Section 45 of the Alabama Constitution of 1901 which provides in pertinent part as follows:

> "Each law shall contain but one subject which shall be clearly expressed in its Title. . . ."

The title to Act 434 reads as follows:

> "To amend Code of Alabama 1975, Sections 40-20-2 and 40-20-8, so as

to increase the rate of tax; to provide further for distribution of the proceeds of the tax; and to provide certain exemptions from the increased rate."

From what has been said above, it is obvious that title to Act 434 covers more than one subject and that the title does not "clearly express" the subjects of the Act. The title makes no reference to any of the following matters:

1. The purported consumer protection and/or pricing regulation in form of the prohibition against pass through contained in Section 1(e).

2. The provision requiring the "producer or severer" to absorb and pay the tax.

3. The extent of the increase of the tax.

4. The fact that the Act imposed differing tax rates on different production.

5. That producers would be required to bear the royalty owner's share of the tax.

6. The fact that the tax is not based on ownership of the mineral interest.

7. That purchasers would be prohibited from accounting for and paying the tax in derogation of the provisions of Section 40-20-3.

The provisions of Section 45 of the Alabama Constitution serve much the same purpose as does admission of legislative history, i.e., to prevent deception of the Legislature and to intelligently inform the members of the legislature of the full and true subject matter of the proposed

legislation. Clutts v. Jefferson County Board of Zoning Adjustment, 282 Ala. 204, 210 So.2d 679 (1968); Bagby Elevator and Electric Company v. McBride, 292 Ala. 191, 291 So.2d 306 (1974); Alabama Education Association v. Board of Trustees of the University of Alabama, 374 So.2d 258 (Ala. 1979).

The title to Act 434 manifestly gives no "warning or notice" with regard to the specific items mentioned above and particularly to the consumer pass through prohibition. The Act deals with several different subjects and the evidence admitted shows that neither the explanation of the sponsor, nor the title the Act, apprised the legislators of all of the subject matter of the bill. Therefore, the Act must be stricken on this ground also.

## IX. ACT 434 IS VOID FOR AMBIGUITY AND IS INCAPABLE OF RATIONAL ENFORCEMENT

The Court finds Act 434 is so vague, uncertain, indefinite, ambiguous, and conflicting with and repugnant to other existing provisions of other statutes that it cannot be enforced on any rational basis and, therefore, must be stricken. The Act is vague, uncertain and conflicting with other statutory provisions in the following particulars:

(1) Section 40-20-1(8) Code of Alabama 1975 expressly defines a "producer" as including a royalty owner, but Act 434, by implication, exempts royalty owners from the definition of a "producer" for certain purposes.

(2) Section 40-20-3 provides that the tax will be imposed in proportion to ownership. However, Act 434 contains an

inconsistent and repugnant provision purporting to exempt royalty owners. This, one section of the law taxes the royalty interest while another purports to exempt royalty owner. The conflict is irreconcilable.

(3) Section 40-20-2(b) levies the tax "upon the basis of the entire production in this state including what is known as the royalty interest." As has been noted, the tax is levied upon producers who are defined to include royalty owners. Yet Act 434 purports to exempt royalty owners. Again, the conflict is more than apparent.

(4) Pass-Through Prohibition prohibits pass through of the tax to "consumers" but consumers are not defined by the terms of the Act. In the next breath, the Act requires in mandatory

language the producer to bear "exclusively" the tax "herein levied." Does this mean that the producer may pass the tax through to a non-consumer as the first portion of paragraph 1(e) of the Act would imply, or does it by requiring him to "exclusively" bear this burden, prohibit him from passing through the tax to a party who neither uses nor consumes the product? This conflict is likewise irreconcilable.

(5) The provisions of paragraph 40-20-3(b) require the purchaser to account for the tax. However, Act 434 in conflict therewith as has been pointed out, states that it must be borne exclusively by the producer. Accordingly, one provision requires the purchaser to account and another provision expressly prohibits transferring the burden of

passing on the cost "either directly or indirectly."

(6) Section 40-20-3(a) provides that the tax will be levied "in the proportion of their ownership at the time of severance," but the Pass-Through Prohibition in conflict therewith says it "will be borne exclusively by the producer." Again, the conflict is irreconcilable.

(7) The Royalty Owner Exemption provides that "any person who is a royalty owner shall be exempt. . .and shall not be liable therefor. Applied literally, any royalty owner (i.e., any person) is exempt even though he might also own a working interest.

(8) The Defendant has interpreted Act 434 in connection with the use of the word "increase" in the Smackover Proviso

to apply only to the new well exemption immediately preceding it. On the other hand, Defendant has interpreted the word "increase" in the Royalty Owner Exemption to apply in any case, not just those instances wherein a royalty owner would own an interest in a "new well." The fact that the Defendant has interpreted the word "increase" in these two provisions in differing manners indicates clearly that the act is conflicting, vague, uncertain and ambiguous.

(9) In the Smackover Proviso reference to depth "between 15,000 and 15,800 feet," there is no specification of whether the depth is to be measured from mean sea level, or the land surface, or the Kelly bushing, or the derrick floor. If the starting point is any one of the last three (as is the situation under

certain Oil and Gas Board records), then hills and other surface variations could cause two nearby wells to be treated differently even though they produce from the same sub-sea depth in the same formation -- an irrational result. Yet the Act wholly fails to prescribe a uniform starting point and leaves the question of the proper starting point open to speculation.

Clearly, the Act is so indefinite, uncertain and ambiguous as to render the entire Act unenforceable. In Opinion by the Justices, 249 Ala. 88, 30 So.2d 14 (1947), the Supreme Court, in striking down an Act authorizing governing bodies of state and local government to contribute to premiums on group life insurance on officers and employees as

ambiguous, set forth the rule prevailing in this state as follows:

> "It is a well recognized rule of law that in the enactment of statutes reasonable precision is required. Indeed, one of the prime requisites of any statute is certainty, and legislative enactment may be declared by the courts to be inoperative and void for uncertainty in meaning. This power of the Court may be exercised where the statute is so incomplete, so conflicting or so vague or indefinite that the statute cannot be executed and the court is unable by the application of law and accepted rules of construction to determine what the legislature intended by any reasonable degree of certainty."

Since the statute did not indicate what was meant by the term "governing body of every state department," nor did it specify what amounts of insurance would be purchased or the percentage of the premiums to be paid out of public funds, the Court applied the above quoted principle of law, in striking down the

statute. See also, Plant v. R.L. Reid, Inc., 294 Ala. 155, 313 So.2d 518 (1975); Dewrell v. Kearley, 250 Ala. 18, 32 So.2d 812 (1947); Standard Oil Company v. State, 178 Ala. 400, 59 So. 667 (1912).

## X. ENTIRE ACT IS INVALID

Act 434 is unconstitutional and void for each of the separate reasons hereinabove discussed. The entire Act is invalid even though it contains a severability clause. The presence of a severability clause does not save an act or portions thereof if the remaining portions are not in accord with the legislative intent. In Ward v. State ex rel Lea, 224 Ala. 242, 139 So. 416 (1932), the Court stated the following:

> "Notwithstanding such saving clause, as to whether or not the valid portion of a statute is immune from

> the invalidating effect the law gives the inseparable blending of the bad with the good, is still a judicial question."

After analysis the Court concluded that there was "such an intimate relationship existing between all parts of the act as to create an 'inseparable blending of the bad with the good,' so that to strike [certain provisions] and leave the remainder would cause results not contemplated or intended by the lawmakers." The Court stated that therefore the whole Act must be invalidated. Additionally, the Court stated the following:

> "But the real and vital question here is one of good faith and when so important features of the act (essential, we think, to the completion and fulfillment of the legislative intent) are condemned as affirmative local legislation under the guise of a general law, the infirmity is such as to permeate the whole act and work its destruction."

Similarly, in Alabama State Federation of Labor v. McAdory, 246 Ala. 1, 18 So.2d 810 (1944), the Court concluded that a severability clause should not be given effect if the remaining portions of the Act were in contravention of the obvious legislative intent. The following language is relevant:

> "We recognize the force of the argument that the separability clause should be given effect, where possible, to save the Act. But the principle is well understood that a clause of this character may not be invoked to save the Act when in contravention of the obvious legislative intent."

In Wilkinson v. Stiles, 200 Ala. 279, 76 So. 45 (1917), the Court considered whether an act should be saved by striking out "a void exception, proviso, or other

restrictive clause." The following language is relevant:

> "It is the general rule of statutory construction that if by striking out a void exception, proviso, or other restrictive clause, the remainder, by reason of its generality, will have a broader scope as to subject or territory, its operation is not in accord with the legislative intent, and the whole would be affected and made void by the invalidity of such part. . . . If a clause in a statute which violates the Constitution cannot be rejected without causing the act to enact what the Legislature never intended, the whole statute must fall. . . . Here we have a clause expressly excepting cities of a population of 35,000 or more, and to strike said clause and uphold the rest of the act would extend the law to every city in the state, although the Legislature said that it should not do so."

In McLendon v. State, 179 Ala. 54, 60 So. 392 (1912), the Court considered a

licensing statute which exempted "ex-Confederate soldiers." The exemption was held invalid under the Fourteenth Amendment to the Federal Constitution. The Court went on to hold that it would be improper simply to strike the exemption from the statute because it "would be in effect to make a statute materially different from that enacted by the Legislature."

In Eliasberg Brothers Mercantile Co. v. Grimes, 204 Ala. 492, 86 So. 56 (1920), the Court held that an income tax statute with rates of from 2% to 4% violated a constitutional prohibition against taxation at a rate greater than 65/100 of 1%. Then the Court considered whether the statute should be held valid to the extent of 65/100 of 1% although invalid as to the

excess. As the following language indicates, the Court held that this should not be done:

> [4] It is the view of the Chief Justice that the income provision, though void as to its levy in excess of 65/100 of 1 per centum, may nevertheless be upheld as a valid levy pro tanto. In our desire to avoid the complete nullification of this important legislative provision, we have given serious and anxious consideration to that suggestion. We have, however, reached the conclusion that to declare it law in that amended form would be in effect nothing less than judicial legislation, and would be a dangerous departure from the settled rules that govern courts in respect to such legislation. The matter of its rate permeated every part and entered into every aspect of the levy. It is clear that the Legislature did not intend to tax all incomes alike, and whether they would have allowed any exemptions at all, or in what amounts, under a flat-rate levy of 65/100 of 1 per centum, and how they would have dealt with other features of the scheme, we cannot say except as a matter of the sheerest conjecture. If the matter were not complicated by these considerations,

> it is possible that a way could be found, under the decision of Wiley v. Parmer, 14 Ala. 627, to save the levy pro tanto.
>
> * * *
>
> It is better that the state should endure the loss and delay which must follow our ruling than that courts should exercise their at least doubtful discretion in adjusting, mending or reconstructing unconstitutional legislation.

In A. Bertolla & Sons v. State, 247 Ala. 269, 24 So.2d 23 (1945), the Court stated the following:

> Where the valid and invalid parts are so bound together that the invalid part is a material inducement to the valid portion, the whole is invalid.

The Smackover Proviso, the Royalty Owner Exemption and the Pass-Through Prohibition are all salient points of Act 434. They were not in the original bill but were added by amendment during the legislative process. They were all added

at the same time. Each reflected a very important purpose of the legislature. It would violate the principles of the foregoing authorities to hold one or more of these provisions invalid but then to hold the remainder of the Act valid. Such a result would manifestly contravene the legislative intent. Accordingly, Act 434 is void and invalid in its entirety.

## XI. ENFORCEMENT OF GAS SALES CONTRACTS

Plaintiff, Warrior Drilling and Engineering Co., Inc., has gas purchase contracts with Defendants Southern Natural Gas Company and Alabama Gas Corporation. Warrior's contract with Alabama Gas Corporation is dated May 1, 1978, and provides in Article IX, paragraph 9.2:

> Buyer will reimburse seller for one hundred percent (100%) of any increase in the total cost per Mcf.

> to seller occurring after the date of initial deliveries hereunder, occasioned by any change in the rate of existing severance tax, or by the imposition or substitution of any new excise taxes, including sales, occupation, severance, gathering, or other taxes of like nature in respect to the gas under this contract.

Warrior's contract with Southern Natural Gas Company is dated April 6, 1979 and provides in Article VIII, section 3:

> Buyer agrees to reimburse seller for one hundred percent (100%) of any taxes now and hereafter lawfully imposed upon and paid by seller with respect to the gas delivered hereunder subject to the further provisions of this Article VIII and provided buyer is permitted to reflect such tax reimbursement in its jurisdictional resell rates.

Plaintiff Pruet Production Company also has a gas purchase contract with Defendant Southern Natural Gas Company which said contract is dated August 1, 1979 and provides in Article VIII, Section 3:

> Buyer agrees to reimburse seller for one hundred percent (100%) of any taxes now and hereafter lawfully imposed upon and paid by seller with respect to the gas delivered hereunder subject to the further provisions of this Article VIII and provided buyer is permitted to reflect such tax reimbursement in its jurisdictional resell rate.

Plaintiff Anderman Operating Company has a gas purchase contract with Coronado Transmission Company, dated June 25, 1979, which provides in Article X, paragraph 10.1 as follows:

> Seller shall pay all excise, severance, sales, occupation and other taxes of like nature levied in respect to the gas and handling thereof prior to the delivery to buyer, at the rate or rates existing as of the date of this contract. Notwithstanding the provisions of this paragraph, in the event FPC, FERC, or successor body having jurisdiction allows reimbursement of current excise, severance, sales, occupation and other taxes of like nature, then buyer shall reimburse seller for all such taxes paid to the extent allowed by the agency having jurisdiction.

Defendant Southern Natural Gas Company and Coronado Transmission Company have failed and refused to reimburse the seller of gas, i.e., Warrior, Pruet or Anderman, as the case may be, for any severance taxes paid by sellers including the old 4% in effect prior to Act 434. The Defendants, Southern Natural Gas Company and Coronado Transmission Company, are relying on Act 434 in their refusal to reimburse any severance taxes paid by sellers pursuant to their respective gas purchase contracts. In view of this Court's finding that Act 434 is null and void for the reasons herein stated, it is the order and judgment of this Court and it is hereby ordered that Southern Natural Gas Company and Coronado Transmission Company pay the 4% severance tax due to sellers (Warrior, Pruet, and Anderman)

since September 1, 1979, according to the terms of their respective gas purchase contracts.

Appropriate judgments will be entered in each case, and the parties in each case (Warrior and Southern Natural Gas Company; Warrior and Alabama Gas Corporation; Pruet and Southern Natural Gas Company; and Anderman and Coronado Transmission Company) are directed to confer among themselves in an attempt to agree upon the amount of reimbursement due and report to this Court within 10 days. The Court retains jurisdiction in the event the parties are unable to agree upon the amount of reimbursement.

ORDER

It is, therefore, ORDERED, ADJUDGED and DECREED by the Court that Act 434,

1979 Session Alabama Legislature, be and the same is hereby declared to be null, void, and unconstitutional in all respects and of no further force or effect.

It is further, ORDERED, ADJUDGED and DECREED by the Court that each of the Plaintiffs herein is entitled to a refund of the taxes paid by them under and pursuant to the provisions of Act 434 and the Defendant is hereby ordered to pay and refund to each of them the amounts so paid by each of said Plaintiffs, with cost of court herein to be taxed against the Defendant. Appropriate judgments will be entered in each case and the parties are directed to confer among themselves in an attempt to agree upon the amounts to be refunded and report to the court within 10 days. The Court retains jurisdiction in

the event the parties are unable to agree upon the amount of refund.

DONE at Montgomery, Alabama on this 12th day of June, 1980.

/s/
Circuit Judge

IN THE CIRCUIT COURT
OF MONTGOMERY COUNTY, ALABAMA

EXCHANGE OIL AND GAS CORPORATION,
Plaintiff,

versus

RALPH EAGERTON, Commissioner of Revenue of the State of Alabama,
Defendant.

CIVIL ACTION NUMBERS:

CV-79-1284-H
CV-79-1362-H
CV-79-1363-H
CV-79-1397-H
CV-79-1529-H
CV-79-1338-H
CV-79-1583-H
CV-79-1622-H
CV-79-1508-H
CV-79-1509-H
CV-79-1510-H
CV-80-006-H
CV-80-165-H
CV-80-166-H
CV-80-167-H
CV-80-168-H
CV-80-121-H
CV-80-421-H
CV-80-863-H
CV-80-351-H
CV-80-714-H
CV-80-509-H
CV-80-074-H
CV-80-224-H
CV-80-225-H
CV-80-226-H
CV-80-227-H
CV-80-228-H
CV-80-229-H
CV-80-564-H
CV-80-565-H
CV-80-566-H
CV-80-567-H
CV-80-568-H
CV-80-569-H
CV-80-517-H
CV-80-518-H
CV-80-519-H
CV-80-520-H
CV-80-780-H
CV-80-781-H
CV-80-782-H
CV-80-783-H

AMENDMENT TO OPINION AND ORDER

This Court having been advised that its Order of June 12, 1980, does not rule on the Complaint of Coronado Transmission Company against Alabama Gas Corporation, the Court on its own initiative hereby amends section XI ENFORCEMENT OF GAS SALES CONTRACTS, Page 43, of said Order, by adding the following:

"Pursuant to the joint stipulation between Alabama Gas Corporation and Coronado Transmission Company submitted at the trial of this cause and this Court's Order and Opinion of June 12, 1980, it is the order and judgment of this Court and it is hereby ORDERED that Alabama Gas Corporation pay four percent (4%) severance tax due to Coronado Transmission Company since September 1, 1979, according

to the terms of their current gas purchase contract.

"An appropriate judgment will be entered and Coronado Transmission Company and Alabama Gas Corporation are directed to confer in an attempt to agree upon the amount of reimbursement due and to report to this Court within ten days."

DONE at Montgomery, Alabama on this 17th day of June, 1980.

/s/
CIRCUIT JUDGE

## Appendix (ii) Footnotes

[1] Some Plaintiffs have also brought their suits against Co-Defendants with whom they have contractual arrangements pertaining to the payment of, or reimbursement for, severance taxes.

[2] This was the information supplied to Representative Brooks Hines by the State Oil and Gas Board which prompted the depth limitation set forth in the Smackover Proviso. If well depths are measured from mean sea level, one well in the Chatom Field, of Washington County, produces from the Smackover between 15,742 and 15,857 feet.

[3] Plaintiffs Exchange Oil and Gas Corporation, Getty Oil Company, and Union Oil Company of California have successfully completed and operate natural gas wells located primarily in Mobile County, Alabama. Plaintiffs Terra Resources, Inc., Warrior Drilling & Engineering Co., Inc., Pruet Production Company, Anderman Operating Company, and Petroleum Corporation of Texas, operate natural gas wells located primarily in Fayette and Lamar Counties, Alabama. In addition, Plaintiff Pruet Production Company operates oil wells located in Choctaw County, Alabama. Plaintiffs Exxon Corporation, The Louisiana Land and Exploration Company and Gulf Oil Corporation have their production primarily in Escambia County, Alabama. Plaintiffs Placid Oil Company and Midroc

Operating Company operate oil wells located primarily in Clarke and Choctaw Counties, Alabama. Plaintiff, Citmoco Services, Inc., operates oil wells located in the Citronelle Field in Mobile County, Alabama.

[4] The Act does not purport to tax most of the production of the Plaintiffs, Pruet, Anderman, Terra, Warrior, and Petroleum Corporation of Texas because most of their wells produce less than 26 barrels of oil per day. Although Terra does have two wells which produce more than 26 barrels per day and which thus are not exempted. The language of this exemption from the face of the Act clearly exempts "all" wells which produce less than 26 barrels of oil per day. This exemption from the face of the Act is clear and unequivocal. This exemption by its terms applies to "all" wells regardless of whether they produce oil or gas. One of the earlier versions of the bill presented by Representative Hines, prepared by the Alabama Reference Service, did restrict the exemption operations to "oil" wells by insertion of the word oil after the word "all" so that the sentence commenced "all oil wells"; but the word oil was omitted from the language exemption on passage of the bill. See the trial testimony of Louis Green, Director of the Legislative Reference Service and Plaintiffs' Exhibit 27. On May 21, 1980, the Court entered judgments in favor of Petroleum Corporation of Texas and Terra Resources on the 26 barrel matter. This judgment was based on the uncontradicted

evidence filed in support of the respective motions for summary judgment. The trial evidence, therefore, further supports said judgments.

[5] The Legislative Fiscal Office is a creature of statute being authorized under the provisions of Section 29-5-1 et seq. Code of Alabama 1975. These statutes specifically provide that the Fiscal Office will furnish information as to the revenues to be derived from proposed legislation to the Committee on Ways and Means of the House and the Committee on Finance and Taxation of the Senate. Section 29-5-7, Code of Alabama 1975. Under House and Senate Rules members of the Fiscal Office have floor privileges and under House Rules 63 and Senate Rule 77 a copy of the Fiscal Notes must be attached to each revenue measure.

[6] As stated in State v. Crenshaw, 287 Ala. 139, 249 So.2d 622 (1971), the "last [provision] in order of arrangement controls."

[7] Alabama S. Bd. of H. ex rel. Baxley v. Chambers County, 335 So.2d 653 (1971) (Court will look less at "letter or words of statute than at the . . . reason and spirit of the law" which is the "pole star" of statutory construction.); Harrison v. Northern Trust Co., 317 U.S. 418 (1942), (Court looks to legislative history for explanation of act's meaning "no matter how clear the words may appear on 'superficial examination.'"); U.S. v. American Trucking Assoc., 310 U.S. 532

(1939), (Court has duty to look to legislative purpose even where wording of statutes are plain and clear since there is no "rule of law" forbidding interpretation in accordance with the legislative purpose); (Galvan v. Press, 347 U.S. 522 (1954), (Oral statement and written memorandum of the sponsor described as a "weighty gloss" on the legislation); NLRB v. Fruit and Vegetable Packers & Warehousemen, 377 U.S. 58 (1964) and Schwegmann Bros. v. Calvert Distillers Corp., 341 U.S. 384 (1951) ("[I]t is the sponsors to which the court looks when the meaning of the statutory words is in doubt.") (Oral and written statements of the sponsor); Chicago and NWR Co. v. United Trnsp. Union, 402 U.S. 570 (1971), (Oral statements of the proponents declared to be "entitled to great weight" in construction of an act.); National Woodwork Mfrs. Asso. v. NLRB, 386 U.S. 612 (1967), (Silence of the sponsors on certain points was looked to in construing the act.); Silver v. Brown, 48 Cal. Rptr. 609, 409 P.2d 689 (1966), (Affidavits of drafting employees admitted in evidence where recorded floor discussions and debates note available.); 143 Conn. 280, 121 A.2d 630 (1956), (Oral statements of House member in charge of bill declared to be "strong indication of the legislative intent."); Brennan v. Corning Glass Works, 480 F.2d 1254 (3rd Cir. 1973), (Sponsor's statements admitted in evidence and declared to be "entitled to great weight.")

[8] Of the twelve counties underlain by the Smackover formation, only six of these have the Smackover formation at a depth of 15,000 to 15,800.

[9] This is the data furnished by the State Oil and Gas Board.

[10] This conclusion is supported by Peddycoart's repudiation of Standard Oil Co. of Kentucky v. Limestone County, 220 Ala. 231, 124 So. 523 (1929), the pre-Peddycoart decision on which the Court in Yancey & Yancey Construction Co. relied.

[11] Plaintiffs' Exhibit 19, page 2, memo of counsel to the Defendant dated September 12, 1979, outlining interpretation of this exemption together with the Pass-Through Prohibition contained in paragraph 1(e) of the Act. See also, the Plaintiffs' Exhibit 18, a memo from counsel for the Defendant dated August 16, 1979 stating in part as follows: ". . .it is my opinion that in the case where an interest in an oil and gas well is owned by a royalty owner, the oil and gas severance tax will be paid on the oil or gas severed by the producer." Subsequently, this opinion and interpretation was modified (see Plaintiffs' Exhibit 19) where the Defendant interpreted the Act as follows: "However, since the royalty-interest owner's share is exempt from the 'payment of any increase in taxes' levied in Act 434, the producer may not deduct from the

royalty-interest owner's portion any amount which would represent the 2% increase in taxes levied by Act 434. . . .Thus, it is my opinion of Act 434 that the producer is liable for the entire 6% of oil and gas severance tax levied. . . .In addition, the royalty-interest owner would be exempt from the payment as a producer of the increase in oil or gas severance tax of 2%. However, . . .the royalty-interest owner may be liable for the payment of a portion of 4% of the severance tax."

[12] See Plaintiffs' Exhibit 19 where counsel to the Defendant construes the Act as follows: ". . .Act 434 clearly manifests the intent of the Legislature that the oil and gas severance tax henceforth shall be paid by the producer and shall not be passed on to anyone. Therefore, it is my opinion that the producer is now liable for the entire oil and gas severance tax."

[13] See Plaintiffs' Exhibit 19 wherein counsel for the Defendant quotes Section 40-20-1(8) at length and makes the following comment with respect thereto: "As can be seen from the above quoted definition of the term 'producer' a royalty-interest owner would be considered a 'producer' within the definition of the term as used in the oil and gas severance tax act. . . .[I]t is my opinion that while the producer is liable for the entire severance tax at the rate of 6%, the producer may deduct from the royalty-interest owner's share an amount

that would reflect the payment of the severance tax by the royalty-interest owner up to 4%."

[14] The Defendant has recognized ownership as the proper basis of the tax. See Plaintiffs' Exhibit 19 wherein counsel to the Defendant states in part: "The royalty interest owner may be liable for payment of a portion of the 4% of the severance tax."

[15] Kuntz, Law of Oil and Gas, Vol. 6.

[16] One kind of royalty is merely the landowner's share of production, free of expenses of production, as created under an oil, gas and mineral lease. Further, royalties include royalty owned by parties other than a landowner or overriding royalty cut out of the lessee's share of production. The royalty under oil and gas leases is a certain fraction of production and is payable in kind or payable in money. Although royalty is not subject to cost of production, it is subject to cost incurred after production, e.g., production or severance taxes, cost of treatment of the product, pipeline costs or transportation costs to market. William and Meyers, Manual of Oil and Gas Terms (4th ed. 1976). See also Simson v. Langholf, 33 Colo. 208, 293 P.2d 392 (1956); Longino v. Machen, 217 Ark. 641, 232 SW.2d 826 (1950); Hinkle v. Gauntt, 201 Okla. 432, 206 P.2d 1001 (1949); State National Bank of Corpus Christi v. Morgan, 135 Tex. 509, 143 SW.2d 757 (1940).

The cases have recognized that the lessor and lessee under an oil, gas and mineral lease are obligated to each pay their proportionate share of severance and other taxes levied upon production. Gulf Refining Co. v. Stone, 197 Miss. 713, 21 So.2d 19 (1945); Canadian River Gas Co. v. Bivins, 137 Tex. 347, 153 SW.2d 432 (1941); Sartor v. United Gas Pub. Ser. Co., 186 La. 555, 173 So. 103 (1937). Thus, in Barwise v. Sheppard, 299 U.S. 33 (1936), the Supreme Court of the United States upheld a state statute that imposed the tax on royalty owners' production as well as on the production of the working interest owners. The Court noted that royalty owners/lessors and working interest owner/lessees are "engaged in a common venture for their mutual benefit" and have "a common purpose of producing." 299 U.S. at 39.

Appendix (III)

THE STATE OF ALABAMA
JUDICIAL DEPARTMENT

IN THE SUPREME COURT OF ALABAMA

SEPTEMBER 4, 1981

79-823

RALPH P. EAGERTON, JR., AS COMMISSIONER OF REVENE [sic] OF THE STATE OF ALABAMA

VS. MONTGOMERY CIRCUIT COURT

EXCHANGE OIL AND GAS CORPORATION, ET AL

IT IS ORDERED that the applications for rehearing filed in the above cause be, and the same are hereby, overruled. NO OPINION.

Appendix (iv)

IN THE SUPREME COURT OF ALABAMA

RALPH P. EAGERTON, JR.,
as Commissioner of Revenue
of the State of Alabama,

Appellant,

versus

EXCHANGE OIL AND GAS CORPORATION, et al.,

Appellees.

CASE NO. 79-823

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Exchange Oil and Gas Corporation, Getty Oil Company, and Union Oil Company of California, Appellees in the above styled cause, Appellants herein, hereby appeal to the Supreme Court of the United States

from the following portions of the judgment of the Supreme Court of Alabama in the case of Eagerton v. Exchange Oil and Gas Corporation, 404 So. 2d 1 (1981):

1. That the pass-through prohibition of 1979 Alabama Acts, No. 79-434, does not violate the Art VI cl. 2 of the United States Constitution;

2. That the royalty owner exemption and pass-through prohibition of 1979 Alabama Acts, No. 79-434, do not violate Art I, §10, cl. 1, of the United States Constitution; and

3. That the royalty owner exemption does not violate the Fourteenth Amendment to the United States Constitution.

The decision and final order was entered in this action on July 10, 1981, by the Supreme Court of Alabama, reversing the judgment of the Circuit Court of Montgomery County, Alabama. Timely applications for rehearing on these portions of the judgment were filed, and rehearing was denied on September 4, 1981.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

RAE M. CROWE

OF COUNSEL:

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Montgomery, Alabama 36101

Attorneys for
Exchange Oil and Gas
Corporation,
Getty Oil Company
Union Oil Company of
California

PROOF OF SERVICE

I, RAE M. CROWE, one of the attorneys for Exchange Oil and Gas Corporation, Getty Oil Company, and Union Oil Company of California, Appellants herein, and a

member of the Bar of the Supreme Court of the United States, hereby certify that on the ____ day of November, 1981, I served copies of the foregoing Notice of Appeal to the Supreme Court of the United States on all parties required to be served, as follows:

1. On Appellee herein, Ralph P. Eagerton, Jr., as Commissioner of Revenue of the State of Alabama, by depositing a copy in a United States post office, with first class postage prepaid, addressed to John J. Breckenridge, his counsel of record, at 201 Administrative Building, Montgomery, Alabama, 36130.

2. On all other parties to the proceeding below, by depositing copies in a United States post office, with first

class postage prepaid, addressed to their respective attorneys of record, as follows:

To: Louis E. Braswell, Esq.,
Attorney for Exxon Corporation
Gulf Oil Corporation
The Louisiana Land and Exploration Company
Post Office Box 123
Mobile, Alabama 36601

To: Robert C. Black, Esq., Attorney for Citmoco Services, Inc.
Hill Building
Montgomery, Alabama 36104

To: James R. Seale, Esq., Attorney for Anderman Operating Company
Midroc Operating Company
Pruet Production Company
Warrior Drilling and Engineering Company, Inc.
Post Office Box 2069
Montgomery, Alabama 36103

To: Macbeth Wagnon, Jr., Esq.,
Attorney for Alabama Gas Corporation
Alagasco Pipeline Company
1500 Brown-Marx Building
Birmingham, Alabama 35203

To: L. Murray Alley, Esq., Attorney
for Southern Natural Gas
Company
1900 First National-Southern
Natural Building
Birmingham, Alabama 35203

To: Edward S. Allen, Esq., Attorney
for Coronado Transmission
Company
Post Office Box 306
Birmingham, Alabama 35201

To: Porter, Gonzalez & Rogers,
Attorneys for Petroleum
Corporation of Texas
1800 Guaranty Bank Plaza
Corpus Christi, Texas 78475

I further certify that on said date I mailed the foregoing Notice of Appeal, with first class postage prepaid, to the Clerk of the Circuit Court of Montgomery County, Alabama, inasmuch as that court may be possessed of the record.

RAE M CROWE
Attorney for Exchange Oil and Gas Corporation, Getty Oil Company and Union Oil Company of California

OF COUNSEL:

Armbrecht, Jackson, DeMouy, Crowe, Holmes & Reeves
Post Office Box 290
Mobile, Alabama 36601

IN THE SUPREME COURT OF ALABAMA

RALPH P. EAGERTON, JR.,
as Commissioner of Revenue
of the State of Alabama,

Appellant,

versus

EXCHANGE OIL AND GAS CORPORATION, et al.,

Appellees.

CASE NO. 79-823

AMENDED NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Come now Appellees Exchange Oil and Gas Corporation, Getty Oil Company and Union Oil Company of California and amend the Notice of Appeal to the Supreme Court of the United States by adding the following paragraph:

4. The Alabama Supreme Court denied these Appellees Due Process of Law under the 14th Amendment to the United States Constitution in that the Alabama Court (a) departed from its long standing rule that legislative history is the polestar in statutory construction, and refused to consider Appellees' uncontroverted and admissible evidence regarding the legislative history of Act 434; and (b) rendered an arbitrary and capricious decision without support in the record.

RAE M. CROWE

OF COUNSEL:

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CROWE, HOLMES & REEVES
Post Office Box 290
Mobile, Alabama 36601

EUEL A. SCREWS, JR.

OF COUNSEL:

COPELAND, FRANCO, SCREWS,
& GILL, P.A.
Post Office Box 347
Montgomery, Alabama 36101

Attorneys for
Exchange Oil and Gas
Corporation,
Getty Oil Company
Union Oil Company of
California

PROOF OF SERVICE

I, RAE M. CROWE, one of the attorneys for Exchange Oil and Gas Corporation, Getty Oil Company, and Union Oil Company of California, Appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the _____ day of December, 1981, I served copies of the foregoing Amended Notice of Appeal to the Supreme Court of the United

States on all parties required to be served, as follows:

1. On Appellee herein, Ralph P. Eagerton, Jr., as Commissioner of Revenue of the State of Alabama, by depositing a copy in a United States post office, with first class postage prepaid, addressed to John J. Breckenridge, his counsel of record, at 201 Administrative Building, Montgomery, Alabama, 36130.

2. On all other parties to the proceeding below, by depositing copies in a United States post office, with first class postage prepaid, addressed to their respective attorneys of record, as follows:

To: Louis E. Braswell, Esq.,
Attorney for Exxon Corporation
Gulf Oil Corporation
The Louisiana Land and Exploration Company
Post Office Box 123
Mobile, Alabama 36601

To: Robert C. Black, Esq., Attorney for Citmoco Services, Inc.
Hill Building
Montgomery, Alabama 36104

To: James R. Seale, Esq., Attorney for Anderman Operating Company
Midroc Operating Company
Pruet Production Company
Warrior Drilling and Engineering Company, Inc.
Post Office Box 2069
Montgomery, Alabama 36103

To: Macbeth Wagnon, Jr., Esq.,
Attorney for Alabama Gas Corporation
Alagasco Pipeline Company
1500 Brown-Marx Building
Birmingham, Alabama 35203

To: L. Murray Alley, Esq., Attorney for Southern Natural Gas Company
1900 First National-Southern Natural Building
Birmingham, Alabama 35203

To: Edward S. Allen, Esq., Attorney
for Coronado Transmission
Company
Post Office Box 306
Birmingham, Alabama 35201

To: Porter, Gonzalez & Rogers,
Attorneys for Petroleum
Corporation of Texas
1800 Guaranty Bank Plaza
Corpus Christi, Texas 78475

I further certify that on said date I mailed the foregoing Amended Notice of Appeal, with first class postage prepaid, to the Clerk of the Circuit Court of Montgomery County, Alabama, inasmuch as that court may be possessed of the record.

RAE M. CROWE

OF COUNSEL:

ARMBRECHT, JACKSON, DeMOUY,
CROWE, HOLMES & REEVES
Post Office Box 290
Mobile, Alabama 36601

Appendix (v)

# Title 15 Natural Gas

## § 717. Necessity for regulation of natural gas companies

(a) As disclosed in reports of the Federal Trade Commission made pursuant to S.Res. 83 (Seventieth Congress, first session) and other reports made pursuant to the authority of Congress, it is declared that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale

thereof in interstate and foreign commerce is necessary in the public interest.

(b) The provisions of this chapter shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.

§ 717c. Rates and charges; schedules; suspension of new rates

(a) All rates and charges made, demanded, or received by any natural-gas company for or in connection with the transportation or sale of natural gas subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges, shall be just and reasonable, and any such rate or charge that is not just and reasonable is declared to be unlawful.

(b) No natural-gas company shall, with respect to any transportation or sale of natural gas subject to the jurisdiction of the Commission, (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any

other respect, either as between localities or as between classes of service.

(c) Under such rules and regulations as the Commission may prescribe, every natural-gas company shall file with the Commission, within such time (not less than sixty days from June 21, 1938) and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection, schedules showing all rates and charges for any transportation or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such

rates, charges, classifications, and services.

(d) Unless the Commission otherwise orders, no change shall be made by any natural-gas company in any such rate, charge, classification, or service, or in any rule, regulation, or contract relating thereto, except after thirty days' notice to the Commission and to the public. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The Commission, for good cause shown, may allow changes to take effect without requiring the thirty days' notice herein provided for by an order

specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.

(e) Whenever any such new schedule is filed the Commission shall have authority, either upon complaint of any State, municipality, State commission or gas distributing company, or upon its own initiative without complaint, at once, and if it so orders, without answer or formal pleading by the natural-gas company, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service; and, pending such hearing and the decision thereon, the Commission, upon filing with such schedules and delivering to the natural-gas company affected thereby a

statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, or service, but not for a longer period than five months beyond the time when it would otherwise go into effect; and after full hearings, either completed before or after the rate, charge, classification, or service goes into effect, the Commission may make such orders with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made at the expiration of the suspension period, on motion of the natural-gas company making the filing, the proposed change of rate, charge, classification, or service shall go into effect. Where increased rates or charges

are thus made effective, the Commission may, by order, require the natural-gas company to furnish a bond, to be approved by the Commission, to refund any amounts ordered by the Commission, to keep accurate accounts in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts were paid, and, upon completion of the hearing and decision, to order such natural-gas company to refund, with interest, the portion of such increased rates or charges by its decision found not justified. At any hearing involving a rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the natural-gas company, and the Commission shall give to the hearing and decision of

such questions preference over other questions pending before it and decide the same as speedily as possible.

June 21, 1938, c. 556, § 4,52 Stat. 822; May 21, 1962, Pub.L. 87-454,76 Stat. 72.

## Title 15 Petroleum Allocation

### § 751. Congressional findings and declaration of purpose

(a) The Congress hereby determines that-

(1) shortages of crude oil, residual fuel oil, and refined petroleum products caused by inadequate domestic production, environmental constraints, and the unavailability of imports sufficient to satisfy domestic demand, now exist

or are imminent;

(2) such shortages have created or will create severe economic dislocations and hardships, including loss of jobs, closing of factories and businesses, reduction of crop plantings and harvesting, and curtailment of vital public services, including the transportation of food and other essential goods; and

(3) such hardships and dislocations jeopardize the normal flow of commerce and constitute a national energy crisis which is a threat to the public health, safety, and welfare and can be averted or minimized most efficiently and effectively through prompt action by the Executive branch of Government.

(b) The purpose of this chapter is to grant to the President of the United States and direct him to exercise specific temporary authority to deal with shortages of crude oil, residual fuel oil, and refined petroleum products or dislocations in their national distribution system. The authority granted under this chapter shall be exercised for the purpose of minimizing the adverse impacts of such shortages or dislocations on the American people and the domestic economy.

Pub.L. 93-159, § 2, Nov. 27, 1973, 87 Stat. 628.

Title 15

§ 3319. Ceiling price for other categories of natural gas

(a) Application.-The maximum lawful price computed under subsection (b) of this section shall apply to any first sale of any natural gas delivered during any month, in the case of any natural gas which is not covered by any maximum lawful price under any other section of this part, including-

(1) natural gas produced from any new well not otherwise qualifying for a higher maximum lawful price under this subchapter;

(2) natural gas committed or dedicated to interstate commerce on November 8, 1978, and for which a just and reasonable rate under the Natural Gas Act was not in effect on such date for the first sale of such natural gas;

(3) natural gas which was not committed or dedicated to interstate commerce on November 8, 1978, and which was not subject to an existing contract on such day; and

(4) natural gas produced from the Prudhoe Bay Unit of Alaska and transported through the natural gas transportation system approved under the Alaska Natural Gas Transportation Act of 1976.

(b) Maximum lawful price-

(1) The maximum lawful price under this section for any month shall be-

(A) $1.45 per million Btu's, in the case of April 1977; and

(B) in the case of any month thereafter, the maximum lawful price, per million Btu's, prescribed under this paragraph for the preceding month multiplied by the monthly equivalent of the annual inflation adjustment factor applicable for such month.

(2) Ceiling prices may be increased if just and reasonable. --The Commission may, by rule or order, prescribe a maximum lawful ceiling price, applicable to any first sale of any natural gas (or category thereof, as determined by the Commission) otherwise subject to the preceding provisions of this section, if such price is-

(A) higher than the maximum lawful price which would otherwise be applicable under such provisions; and

(B) just and reasonable within the meaning of the Natural Gas Act.

Pub.L. 95-621, Title I, § 109, Nov. 9, 1978, 92 Stat. 3368.

§ 3320. Treatment of state severance taxes and certain production-related costs

(a) Allowance for State severance taxes and certain production-related costs.--Except as provided in subsection (b) of this section, a price for the first sale of natural gas shall not be considered to exceed the maximum lawful price applicable to the first sale of such

natural gas under this part if such first sale price exceeds the maximum lawful price to the extent necessary to recover--

(1) State severance taxes attributable to the production of such natural gas and borne by the seller, but only to the extent the amount of such taxes does not exceed the limitation of subsection (b) of this section; and

(2) any costs of compressing, gathering, processing, treating, liquefying, or transporting such natural gas, or other similar costs, borne by the seller and allowed for, by rule or order, by the Commission.

(b) Limitation on State severance taxes. --The State severance tax allowable under subsection (a)(1) of this section

with respect to the production of any natural gas may not include any amount of State severance taxes borne by the seller which results from a provision of State law enacted on or after December 1, 1977, unless such provision of law is equally applicable to natural gas produced in such State and delivered in interstate commerce and to natural gas produced in such State and not so delivered.

(c) Definition of State severance tax. --For purposes of this section, the term "State severance tax" means any severance, production, or similar tax, fee, or other levy imposed on the production of natural gas--

(1) by any State or Indian tribe (as defined in section 3316(b)(2)(B)(ii) of this title); and

(2) by any political subdivision of a State if the authority to impose such tax, fee, or other levy is granted to such political subdivision under State law.

Pub.L. 95-621, Title I, § 110, Nov. 9, 1978, 92 Stat. 3368.

Act No. 79-434

Be it Enacted by the Legislature of Alabama:

Section 1. Code of Alabama 1975, Section 40-20-2, is amended to read as follows:

"§ 40-20-2. (a) There is hereby levied, to be collected hereafter, as

herein provided, annual privilege taxes upon every person engaging or continuing to engage within the State of Alabama in the business of producing or severing oil or gas as defined herein, from the soil or the waters, or from beneath the soil or the waters, of the state for sale, transport, storage, profit, or for use. The amount of such tax shall be measured at the rate of six per centum of the gross value of said oil or gas at the point of production. All wells producing less than 26 barrels of oil per day shall be taxed at the rate of four per centum (4%) of the gross value of said oil or gas at the point of production. All wells that come into production after the effective date of this Act shall be taxed at the rate of four per centum (4%) of the gross value of said oil or gas at the point of production

for a period of ten years after production begins. Ten years after production begins, such tax shall then be imposed at the rate of six per centum (6%) on such wells that go into production after the effective date of this Act. Provided, however, that said additional increase shall be limited to those oil and gas wells from between 15,000 and 15,800 feet in the smackover formation. (b) The tax is hereby levied upon the basis of the entire production in this state, including what is known as the royalty interest, on which production the amount of such tax shall be a lien, regardless of the place of sale or to whom sold, or by whom used, or the fact that the delivery may be made to points outside the state; and the tax shall accrue at the time such oil or gas is severed from the soil or the waters, or

from beneath the soil or the waters, and in its natural, unrefined, or unmanufactured condition. (c) A county, city, town or municipality of the state of Alabama shall not establish, levy, impose or collect as a condition of doing business or otherwise, any tax, fee, license or charge, whatsoever, directly or indirectly, on or with respect to the production, treating, processing, ownership, sale, storage, purchase, marketing, or transportation on any oil or gas produced in the state of Alabama and on which severance taxes have been paid to the state of Alabama, or upon the business of producing, treating, processing, owning, selling, buying, storing, marketing or transporting such oil, or gas or upon the ownership, operation or maintenance of plants, facilities,

machinery, pipe lines, gathering lines or any equipment whatsoever, which are, or may be necessary or convenient to the production, treating, processing, ownership, storage, sale, purchase, marketing or transportation of such oil or gas; provided, that nothing herein shall be construed to prohibit, limit or restrict a county, city, town or municipality from imposing and collecting ad valorem taxes on any property, real or personal not otherwise now exempted by law; further, the limitation herein imposed upon counties, cities, towns and municipalities shall not apply to any county, city, town or municipality which does not receive a share of the severance tax under the provisions of this article. (d) Nothing contained herein shall be deemed to limit or to enlarge the

authority of a county, city, town or municipality to levy taxes or licenses on oil refining facilities located therein or on the suppliers of services or goods not including oil or gas to those persons engaging in the business of producing, treating, processing, owning, selling, buying, storing, marketing or transporting such oil or gas. Any person who is a royalty owner shall be exempt from the payment of any increase in taxes herein levied and shall not be liable therefor.

(e) The privilege tax herein levied shall be absorbed and paid by those persons engaged in the business of producing or severing oil or gas only, and the producer shall not pass on the costs of such tax payments, either directly or indirectly, to the consumer; it being the express intent of this act that the tax herein

levied shall be borne exclusively by the producer or severer of oil or gas."

. . . .

Section 3. The provisions of this act are severable. If any part of this act is declared invalid or unconstitutional, such declaration shall not affect the part which remains.

Section 4. This Act shall become effective on the first day of the second month after its passage and approval by the Governor, or its otherwise becoming a law.

Approved July 19, 1979

Time: 11:45 P.M.

Code of Alabama 1975 § 40-20-1(8)

(8) PRODUCER. Any person engaging or continuing in the business of oil or gas production, which, for the purpose of this article, includes the owning, controlling, managing, or leasing of any oil or gas property or oil or gas well, and producing in any manner any oil or gas by taking it from the soil or waters, or from beneath the soil or waters, of the state of Alabama, and further includes receiving money or other valuable consideration as royalty or rental for oil or gas produced or because of oil or gas produced, whether produced by him or by some other person on his behalf, either by lease, contract or otherwise, and whether the royalty consists of a portion of the oil or gas produced being run to his

account or a payment in money or other valuable consideration.

§ 40-20-3. Tax levied upon producers in proportion to ownership at time of severance; by whom tax paid; lien

(a) The privilege tax hereby imposed is levied upon the producers of such oil or gas in the proportion of their ownership at the time of severance, but, except as otherwise herein provided, the tax shall be paid by the person in charge of the production operations, who is hereby authorized, empowered and required to deduct from any amount due to producers of such production at the time of severance the proportionate amount of the tax herein levied before making payments to such producers. The tax shall become due and payable as provided by this article and such tax shall constitute a first lien upon any of the oil or gas so produced

when in the possession of the original producer or any purchaser of such oil or gas in its unmanufactured state or condition. In the event the person in charge of production operations or the purchaser fails to pay the tax, then the department shall proceed against the producer or the purchaser to collect the tax in the manner hereinafter provided by this article.

(b) When any person in charge of production operations shall sell the oil or gas produced by him, the purchaser shall account for the tax.

(c) When any person in charge of production operations shall use or dispose of the oil or gas for fuel or any other purpose, he shall withhold the tax imposed

by this article; and, if he is required to pay other interest holders, he is hereby authorized, empowered and required to deduct from any amounts due them the amount of tax levied and due under the provisions of this article before making payment to them.

(d) Every person in charge of production operations by which oil or gas is severed from the soil or waters, or from beneath the soil or waters, of the state of Alabama who fails to deduct and withhold, as required herein, the amount of tax from sale or purchase price, when such oil or gas is sold or purchased under contract or agreement, or on the open market, or otherwise, shall be liable to the state for the full amount of taxes, interest and penalties due the state; and

the department shall proceed to collect the tax from the person in charge of production operations, under the provisions of this article, as if he were the producer of the oil or gas. (Acts 1945, No. 2, p. 20, § 3; Acts 1953, No. 454, p. 559.)

H. 909 By Hines

R1 4/8/80

RFD State Administration

SYNOPSIS: This Bill repeals Section 40-20-2 and Section 40-20-8, Code of Alabama 1975, as amended by Act No. 434, Acts of Alabama 1979, and reenacts Sections 40-20-2 and 40-20-8, Code of Alabama 1975 as these Sections existed prior to the enactment

of said Act No. 434, Acts of Alabama 1979 and increases the rate of severance taxes on the production of oil and gas from wells 15,000 to 15,800 feet in the smackover formation that come into production after September 1, 1979, and provides further for the distribution of the proceeds of the increased rate of taxation and provides certain exemptions from the increased rate.

A B I L L

T O B E E N T I T L E D

A N A C T

To repeal Section 40-20-2 and Section 40-20-8, Code of Alabama 1975, as amended

by Act 434, Acts of Alabama 1979, and to reenact Section 40-20-2 and Section 40-20-8 as the same existed prior to enactment of Act 434, Acts of Alabama 1975, and to further provide for the rate of severance tax on the production of oil and gas on wells from 15,000 to 15,800 feet in the smackover formation that come into production after September 1, 1979, to provide further for distribution of the proceeds of the increased tax and to provide certain exemptions from the increased rate.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 40-20-2, Code of Alabama 1975 as amended by Act 434, Acts of Alabama 1979, is hereby repealed.

Section 2. Section 40-20-8, Code of Alabama 1975, as amended by Act 434, Acts of Alabama 1979, is hereby repealed.

Section 3. It is hereby declared the intent of the Legislature of Alabama that Act 434, Acts of Alabama 1979, did not amend Section 40-20-2, Code of Alabama 1975 so as to increase the rate of oil and gas severance tax uniformly within the State of Alabama but that the enactment of said Act 434 was intended to limit and did limit the increased rate of taxation only to those wells between 15,000 and 15,800 feet in the smackover formation. All state, county or municipal regulatory or other interpretations contrary to the aforesaid expressed intent of the Legislature of Alabama are hereby declared null and void.

## Appendix (vi)

Appellants, pursuant to Rule 28.1, list the following parent companies, subsidiaries and affiliates:

Exchange Oil and Gas Corporation: Georgia Pacific Corp.; Bayou Hydro-Carbon, Inc.

Union Oil Company of California: Union Oil Company of Canada Limited; Union Oil Company of Great Britain; UNOCO Limited; Molycorp, Inc.; Moreland Development Company; Union Oil Credit Corporation; Union Geothermal Japan, Ltd.; Union International Exploration Co. LTD.; Union Oil Exploracao de Petroleo, LTDA; Unionoil Suez Ltda.; Union Oil Co. of Indonesia; Unionoil Japan, LTD.; Kyung In Energy Co., Ltd.; Union Oil Co. of the Netherlands; Unionoil Norge A/S; Philippine Geothermal Inc.; Unionoil Co. of Great Britain; Unocal Corporation; Union Oil Co. of Thailand; Union Oil Development Corp.; Arizona Refining Company; Hemphill Oil Company; West Coat Shipping Company; PureGro Company; Poco Graphite, Inc.; Pure Transportation Company; Arapahoe Pipe Line Company; Union Oil Offshore Exploration Company, Ltd.

Getty Oil Company: ADL Financial Services, Inc.; ADL Investment Company, Inc.; American Defender Life Insurance Company; American Travel Corporation; Apple Valley Ranchos Water Co.; Arbuckle Pipe Line Company; Associated Oil Company

(1936 Company); Banner, Inc.; Basin Drilling Corp. (Authorized Trade Name); Basin Petroleum North Sea Corp.; Basin Petroleum Turkey Corp.; Bay Transport Corporation; Butte Pipe Line Company; Canadian Reserve Oil and Gas Ltd.; The Centennial Life Insurance Company; Chase Terminal Company (Joint Venture); Chase Transportation Company (Joint Venture); Chembond Corporation; Chembond of British Columbia Ltd.; Chemplex Company; Chemplex Company (Joint Venture); Chemplex Construction Corporation; Chisholm Pipeline Company; Colombian Reserve Oil and Gas Company; Crescent Petroleum Company; Dieter Pohleann & Co. GmbH; Easco, B.V.; Easco, G.m.b.H; Easco International, Sarl.; Easco Marine, Ltd.; Easco Petroleum, Ltd.; Easco, S.A.; Easco S.r.l.; Employers Reinsurance Corporation; Energy Fuels Corporation; Entertainment and Sports Programming Network, Inc.; ERC Management Corporation; FFEC - Five, Inc.; FFEC - Four, Inc.; FFEC - Six, Inc; FFEC - Two, Inc.; F.I.C. & Associates, Inc.; First Administration Service Company, Inc.; First Excess and Reinsurance Corporation; First Fidelity Equity Corporation; First Systems Corporation; FORM Foreign Reinsurance Management AG; Frontier Hotels, Inc.; Getcom, Inc.; Getty Asian Oil Company; Getty Canadian Metals, Ltd.; Getty Capital Corporation; Getty Chemical Company; Getty Crude Gathering, Inc.; Getty Fleet Corporation; Getty Gas Gathering, Inc.; Getty International, Inc.; Getty Iran Ltd.; Getty Marine Corporation; Getty Marine Services Limited; Getty Maritime, Inc; Getty

Methanol Corporation; Getty Mineral Resources Company; Getty Minerals Company, Limited; Getty Mines, Limited; Getty Mining Company; Getty Mining (Chile), Inc.; Getty Mining (Ireland) Ltd.; Getty Mining Northwest, Limited; Getty Mining (Philippines), Inc.; Getty Mining (Portugal), Inc.; Getty Minning Pty. Ltd.; Getty Oil (Angola), Limited; Getty Oil (Britain) Limited; Getty Oil (Canada), Ltd.; Getty Oil (Canadian Operations), Ltd.; Getty Oil (Congo), Inc.; Getty Oil (Guatemala), Inc.; Getty Oil (Ivory Coast), Inc.; Getty Oil (Morocco), Inc.; Getty Oil (Mossel Bay), Ltd.; Getty Oil (Peru), Inc.; Getty Oil (Sakala), Inc.; Getty Oil (Sharjah), Inc.; Getty Oil (Sumatra), Inc.; Getty Oil (Tomori), Inc.; Getty Oil (Trinidad and Tobago), Inc.; Getty Oil (Walvis Bay), Ltd.; Getty Oil Company; Getty Oil Company Foundation; Getty Oil Company of Spain S.A.; Getty Oil Development Company, Ltd.; Getty Oil Drilling Company; Getty Oil Exploration (U.K.), Limited; Getty Oil International (Antilles) N.V.; Getty Oil International (Argentina), Inc.; Getty Oil International (Bolivia), Inc.; Getty Oil International (Caribbean) N.V.; Getty Oil International (Congo), Inc.; Getty Oil International (Equatorial Guinea), Inc.; Getty Oil International (Ghana), Inc.; Getty Oil International (Guatemala), Inc.; Getty Oil International (Indonesia), Inc.; Getty Oil International (Ireland), Ltd.; Getty Oil International (Mauritania), Inc.; Getty Oil International (Nine), Inc.; Getty Oil International (Orient), Inc.; Getty Oil International (Red Sea), Inc.; Getty Oil

International (Sinai), Inc.; Getty Oil International (Somalia), Ltd.; Getty Oil International (Spain) S.A.; Getty Oil International (Ten), Inc.; Getty Oil International (Three), Inc.; Getty Oil International (Vietnam) Inc.; Getty Oil International Exploration Company; Getty Oil Operations Company; Getty Petroleum Company; Getty Petroleum Ireland, Limited; Getty Pipe Company; Getty Pipe Line Company; Getty Pipeline, Inc.; Getty Refining and Marketing Company; Getty Reserve Oil, Inc.; Getty Rice Ranch Estates, Inc.; Getty Synthetic Fuels, Inc.; Gibson Holdings, Ltd.; Gibson Petroleum Ltd.; Grande Properties, Inc.; Halbouty Alaska Oil Company; Hanover Financial Corporation; Hanover Sales Corporation; Hawkeye Chemical Company; Huelva Pyrites, Inc.; Iberian Petroleum, Ltd.; Iricon Agency Ltd.; Mediterranean (Algeria) Oil Company; Minnehoma Corporation; Minnehoma Cotton, Inc.; Minnehoma Development, Inc.; Minnehoma Land and Farming Company; Mitsubishi Oil Company, Limited; Mohawk Crude Purchasing Company; Mohawk Petroleum Corporation, Inc.; National Fidelity Life Insurance Company; Norake Getty Exploration A/S; North Slope Gas Transmission Corporation; North Slope Pipe Line Corporation; Northern Tier Pipeline Company; Nuclear Fuel Services, Inc.; Osage Pipe Line Company; Pacific Western Oil Corporation; Petroman, Inc.; Plains Pipe Line Company; Plateau Mining Company; Pontotoc Oil Company; Reserve Oil and Gas Company (1979 Nameholder Company); RVO Insurance, Ltd.; RVO Petroleum Co.; Seville Metals

Corporation; Skelly Leasing Company; Skelly Oil Company (1977 Company); Texas-New Mexico Pipe Line Company; Texoma Pipe Line Company; Tide Water Oil Company (India), Limited; Tidewater Oil Company (1967 Company); Toplis and Harding, Inc.; Uinta Pipeline Corporation; Vancouver Plywood Co., Inc.; Vanply, Inc.; Vanply of Liberia, Inc.; Welfish Mining Company; Wallace Butts Insurance Agency, Inc.; Wascana Pipe Line, Inc.; Wascana Pipe Line, Ltd.; Wesco Gas Services, Inc.; Wesco G.m.b.H.; Wesco International, Inc.; Wesco Petroleum, Ltd.; Wesco Pipe Line Company; West Shore Corporation; Western Crude Oil, Inc.; Western Crude Terminals, Inc.; Western Gravities, Inc.; Wyanot Pipe Line Company; Wyo-Cal Oil, Inc. (DBA for West Shore Corporation in California); Yong-Nam Chemical Company, Ltd.

# Motion to Dismiss or Affirm

Office - Supreme Court, U.S.
FILED
FEB 5 1982
ALEXANDER L. STEVAS,
CLERK

No. 81-1268

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1981

EXCHANGE OIL AND GAS CORPORATION, et al.,
Appellants,

versus

RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF ALABAMA

## MOTION TO DISMISS

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No. 81-1268

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1981

EXCHANGE OIL AND GAS CORPORATION AND GETTY OIL COMPANY, AND UNION OIL COMPANY OF CALIFORNIA,
Appellants,

v.

RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama,
Appellees.

# MOTION TO DISMISS APPEAL

May it please the Court:

Appellee Ralph P. Eagerton, Jr., as Commissioner of Revenue of the State of Alabama, pursuant to Rule 16 of the Rules of the United States Supreme Court, moves that the appeal in this cause as filed by the Appellants be dismissed.

## I. Grounds for Motion to Dismiss Appeal

### A. LACK Of JURISDICTION

In Section F of their Jurisdictional Statement at page x the Appellants have stated:

> "The jurisdiction of the U.S. Supreme Court to review this decision by appeal is conferred by Title 28, U.S.C. §1257(2)."

Title 28 *United States Code* Section 1257 provides in pertinent part as follows:

> "Final Judgments or Decrees rendered by the highest court of the State in which a decision could be had, may be reviewed by the Supreme Court as follows: (2) by appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

The Appellee Ralph P. Eagerton, Jr., as Commissioner of Revenue of the State of Alabama states that the decision of the Supreme Court of Alabama from which the Appellants have taken this appeal is not a "final judgment or decree" rendered by the Supreme Court of Alabama. As can be determined from a reading of the Judgment of the Supreme Court of Alabama which the Appellants are asking this Court to review, the cause was reversed *and remanded* to the Circuit Court of Montgomery County, Alabama for further proceedings. (Appellants' Appendix, page I-37). On remand, the Circuit Court of Montgomery County, Alabama entered a *Final Opinion and Judgment* dated September 30, 1981. (Appellee's Appendix B, page 1b) On November 2, 1981, the Appellee Ralph P. Eagerton, Jr., as Commissioner of Revenue of the State of Alabama filed a *Notice of Appeal* to the Supreme Court of Alabama from the *Final Opinion and Judgment* of the Circuit Court of Montgomery County, Alabama dated September 30, 1981. (Appellee's Appendix C, page 1c.) The Clerk of the Supreme Court of Alabama notified the Appellee Ralph P. Eagerton, Jr., that his appeal was docketed in the Supreme Court of Alabama on November 10, 1981.

(Appellee's Appendix D, page 1d.) On November 12, 1981 the Appellants Exchange Oil and Gas Corporation, Getty Oil Company, and Union Oil Company of California filed their *Notice of Appeal* in the Supreme Court of Alabama. (Appellee's Appendix E, page 1e.) On December 1, 1981, the Clerk of the Supreme Court of Alabama notified those Appellant Oil Companies in the Supreme Court of Alabama that their appeal had been docketed. (Appellee's Appendix F, page 1f.) The appeal of Ralph P. Eagerton, Jr., as Commissioner of Revenue of the State of Alabama and the cross appeal of some of the Appellant Oil Companies is presently before the Supreme Court of Alabama and has not yet been submitted for a final disposition by the Supreme Court of Alabama. Therefore, the Appellee Ralph P. Eagerton, Jr., as Commissioner of Revenue of the State of Alabama submits that the judgment appealed from by the Appellants in the present action is not a "final judgment or decree" as required by Title 28 U.S.C. Section 1257 as alleged by the Appellants in the present action and therefore the appeal to this Honorable Court is due to be dismissed.

## B. FAILURE TO COMPLY WITH RULES OF THE UNITED STATES SUPREME COURT.

Rule 12.1 of the Rules of the United States Supreme Court requires that the Appellants at the time of docketing their appeal must file forty copies of the jurisdictional statement, "which shall comply in *all* respects with Rule 15." (emphasis added.)

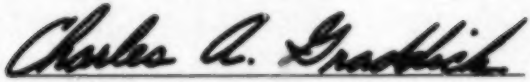
Rule 15, which outlines the items which must be included in a Jurisdictional Statement requires at subsection .1(j)(i) that the appendix to the jurisdictional statement shall contain "copies of any opinions, orders,

findings of fact, and conclusions of law, whether written or oral (if recorded and transcribed), delivered upon *the rendering of the judgment* or decree by the court whose decision is sought to be reviewed." (emphasis added.) Since the decision from which the Appellants in the present action are appealing was remanded to the circuit court for further deliberation and action, *and was not rendered* by the Supreme Court of the State of Alabama, the alleged jurisdictional statement filed by the Appellants is not complete as required by Rule 15 of the Rules of the United States Supreme Court. Rule 15.2 of the Rules of the United States Supreme Court provides: "The jurisdictional statement shall be produced in conformity with Rule 33. The Clerk shall not accept any jurisdictional statement that does not comply with this Rule and with Rule 33, except that a party proceeding *in forma pauperis* may proceed in the manner provided in Rule 46." The Appellants are not proceeding *in forma pauperis* and since their jurisdictional statement does not include a required copy of an opinion issued by the Supreme Court of the State of Alabama *rendering a judgment*, the jurisdictional statement is not complete and the appeal of the Appellants is due to be dismissed.

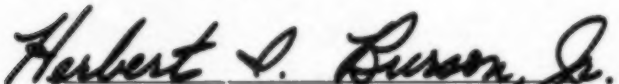
## II. CONCLUSION

The Appellee Ralph P. Eagerton, Jr., as Commissioner of Revenue of the State of Alabama moves this Honorable Court, in view of the foregoing grounds presented herein, to grant his Motion to Dismiss this appeal for lack of jurisdiction, and failure to comply with the Rules of this Court.

Respectfully submitted,



CHARLES A. GRADDICK
Attorney General
State of Alabama



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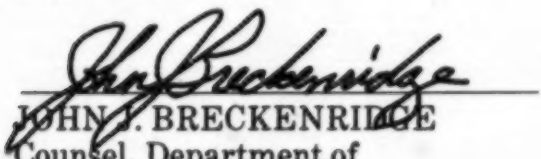

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No. 81-1268

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1981

EXCHANGE OIL AND GAS CORPORATION AND GETTY OIL COMPANY, AND UNION OIL COMPANY OF CALIFORNIA,
Appellants,

v.

RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama,
Appellee.

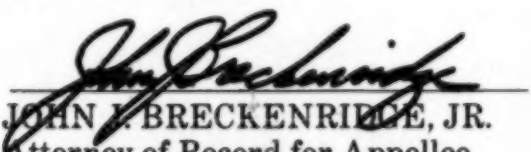
## PROOF OF SERVICE

I, John J. Breckenridge, Jr., a member of the Bar of the Supreme Court of the United States, and one of the attorneys for the Appellee Ralph P. Eagerton, Jr., as Commissioner of Revenue of the State of Alabama, hereby certify that on the fifth day of February, 1982, I served copies of the foregoing Motion to Dismiss on all parties required to be served as follows: on Appellants herein, Exchange Oil and Gas Corporation, Getty Oil Company, and Union Oil Company of California, by depositing a copy in the United States Mail, with first-class postage prepaid, addressed to:

To Rae M. Crowe, Esq., Attorney for Exchange Oil and Gas Corporation, Getty Oil Company, and Union Oil Company of California,

Armbrecht, Jackson, DeMoury, Crowe, Holmes and Reeves
1101 Merchants National Bank
Building, P.O. Box 290
Mobile, Alabama 36601;

To Euel A. Screws, Jr., Esq., Attorney for Exchange Oil and Gas Corporation, Getty Oil Company and Union Oil Company of California,
Copeland, Franco, Screws and Gill, P.A.
P.O. Box 347
Montgomery, Alabama 36101



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No. 81-1268

IN THE

# *Supreme Court of the United States*

OCTOBER TERM, 1981

EXCHANGE OIL AND GAS CORPORATION, et al.,
Appellants,

versus

RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama,
Appellee.

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF ALABAMA

# APPENDICES


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## Appendix A

THE STATE OF ALABAMA
—JUDICIAL DEPARTMENT—

THE SUPREME COURT OF ALABAMA

SPECIAL TERM — 1981

Ralph P. Eagerton, Jr.,
as Commissioner of Revenue
of the State of Alabama

v.

Exchange Oil and Gas Corporation, et al.

Appeal from Montgomery Circuit Court

BEATTY, JUSTICE.

Fourteen oil and gas producers filed similar suits challenging the constitutionality of Act No. 79-434, approved by the Alabama Legislature in its 1979 Regular Session, and seeking refunds of oil and gas severance taxes paid pursuant to the Act. The trial court held the Act to be unconstitutional. Ralph P. Eagerton, Jr., as Commissioner of Revenue, appealed. We reverse and remand.

Before the legislature enacted Act No. 79-434, the statute governing the amount of oil and gas severance tax was Code of 1975, §40-20-2. That section in its relevant part read:

(a) There is hereby levied, to be collected

hereafter, as herein provided annual privilege taxes upon every person engaging or continuing to engage within the state of Alabama in the business of producing or severing oil or gas as defined herein from the soil or the waters, or from beneath the soil or the waters, of the state for sale, transport, storage, profit or for use. The amount of such tax shall be measured at the rate of five percent of the gross value of said oil or gas at the point of production until October 1, 1973, at which time the rate of such tax shall decrease to four percent, which shall be the applicable rate thereafter. (b) The tax is hereby levied upon the basis of the entire production in this state, including what is known as the royalty interest, on which production the amount of such tax shall be a lien, regardless of the place of sale or to whom sold, or by whom used, or the fact that the delivery may be made to points outside the state; and the tax shall accrue at the time such oil or gas is severed from the soil or waters, or from beneath the soil or the waters, and in its natural, unrefined or unmanufactured condition.

Code of 1975, §40-20-8, dealt with the allocation and distribution of the taxes collected.

The caption of Act No. 434 states that its purpose is: "To amend Code of Alabama 1975, Sections 40-20-2 and 40-20-8, so as to increase the rate of tax; to provide further for the distribution of the proceeds of the tax; and to provide certain exemptions from the increased

rate." Section 1(a) of Act 79-434 provides:

> Code of Alabama 1975, §40-20-2, is amended to read as follows:
>
> §40-20-2. (a) There is hereby levied, to be collected hereafter, as herein provided, annual privilege taxes upon every person engaging or continuing to engage within the State of Alabama in the business of producing or severing oil or gas as defined herein, from the soil or the waters, or from beneath the soil or the waters, of the state for sale, transport, storage, profit, or for use. The amount of such tax shall be measured at the rate of six per centum of the gross value of said oil or gas at the point of production. All wells producing less than 26 barrels of oil per day shall be taxed at the rate of four per centum (4%) of the gross value of said oil or gas at the point of production. All wells that come into production after the effective date of this Act shall be taxed at the rate of four per centum (4%) of the gross value of said oil or gas at the point of production for a period of ten years after production begins. Ten years after production begins, such tax shall be then imposed at the rate of six per centum (6%) on such wells that go into production after the effective date of this Act. Provided, however, that said additional increase shall be limited to those oil and gas wells from between 15,000 and 15,800 feet in the smackover formation ..."

The primary issue in this appeal deals with the effect of the phrase which reads "said additional increase shall be limited to those oil and gas wells from beneath 15,000 and 15,800 feet in the smackover formation." (hereinafter the smackover provision) in Act No. 79-434.

Code of 1975, §40-20-2 had previously imposed a 4% severance tax on statewide oil and gas production. The commissioner contends that Act No. 79-434, the amendatory Act, was intended to increase that rate from 4% to 6% statewide. The appellees, however, urge that because of the inclusion of the sentence which reads "said additional increase shall be limited to those oil and gas wells from between 15,000 and 15,800 feet in the smackover formation," the entire Act was intended only to impose an increase on the wells which were producing oil and gas from the smackover formation at the depth specified.

It is undisputed that the smackover formation underlies only twelve counties in Alabama and that that is an unchanging fact. It is also clear that at the time of the passage of the Act, the only production in the smackover formation from 15,000 to 15,800 feet in Alabama was in escambia County. Thus the appellees urge that the increase from 4% to 6% was intended only to apply to those wells in the smackover formation at that depth, all of which were in Escambia County. Since the Act as to interpreted would only apply to one county, appellees contend that it is a local Act.

In *Town of Loxley v. Rosinton Water, Sewer and Fire Protection Authority, Inc.*, Ala., 376 So.2d 705 (1979) this Court said:

> In interpreting statutes the underlying

consideration, always, is to ascertain and effectuate the intent of the legislature as expressed in the statutes. *Employees' Retirement System of Alabama v. Head*, 369 So.2d 1227 (Ala. 1979). While specific language used by the legislature is subject to explanation, such language cannot be detracted from, or added to. *May v. Head*, 210 Ala. 112, 96 So. 869 (1923). Furthermore, when the language of a statute is clear and unambiguous there is no room for judicial construction. *Employees' Retirement System of Alabama v. Head*, supra ... The purpose of interpretation is not to improve a statute but rather to explain the express language used in the statute. *Lewis v. Hitt*, 370 So.2d 1369 (Ala. 1979).

The appellant contends that the language of the smackover provision, which reads, "*said additional increase* shall be limited to those oil and gas wells from between 15,000 and 15,800 feet in the smackover formation" (emphasis added), should properly be construed by reading that provision in conjunction with the sentence immediately preceding it. The preceding sentence limits the increase on wells that go into production after the effective date of the Act to 4% for a period of ten years and then provides that after ten years it shall be raised to 6%. By reading the two sentences together, appellant urges that the smackover provision would refer only to the increase from 4% to 6% on new wells after a ten-year moratorium and not to the state-wide severance tax increase from 4% to 6%. In other words, the appellant urges that the smackover provision requires that new wells will all be taxed at a rate of 4% for ten years, and then there shall be an increase to 6% on those new wells in

the smackover formation at the depth specified. According to the appellant, the smackover provision was not intended to limit the entire Act so that wells in the smackover formation at that depth were the only ones to be taxed at a rate of 6%.

The manifested intent of the Legislature, as stated in the Act itself, was to levy this tax upon "every person engaging or continuing to engage within the State of Alabama in the business of producing or severing oil or gas ..." This is a clear and unambiguous statement that the legislature intended for the tax increase to apply statewide. Moreover, Act No. 79-434 specifically replaces and amends Code of 1975, §40-20-2 which imposed a 4% severance tax statewide. If this Act were interpreted as applying only to those wells in the smackover formation at the specified depth, and only in Escambia County, there would be no provision for taxing the rest of the state. Certainly that was not the intent of the legislature.

After a careful reading of the Act, we are convinced that the smackover provision should logically be read in conjunction with the preceding sentence and should only be construed as a limitation on the taxing of new wells. Although the appellees put forth various forms of extrinsic evidence, some of which was clearly inadmissible, in order to prove the intent of the legislature, the general rule is that when the intent of the legislature can be determined from the language of the statute itself, we do not need to resort to extraneous matters to determine the legislative intent. "Courts can only learn what [the] Legislature intended by what it has said, and have no right to stray into mazes of conjecture or search for an imaginary purpose, in construing [a] statute." *Alabama Industrial Bank v. State ex rel. Avinger*, 286 Ala. 59, 237 So.2d 108 (1970). We are thus compelled to find that the

smackover provision was not intended by the Legislature to be a limitation which affected the entire Act.

The trial court held that because of the inclusion of the smackover provision Act No. 79-434 was a local Act. This decision was apparently based on the authority of *Peddycoart v. City of Birmingham, Ala.*, 354 So.2d 808 (1978) in which this Court held that if at the time legislation was adopted it applied to any political subdivision less than the whole state, it was a local Act.

Since we interpret the smackover provision as being a limitation on the taxing of new wells, and not as a limitation on the entire Act, we find that Act No. 79-434 is one which in its terms and effects applies to the whole state. Not only does the Act impose an increased severance tax on the production of oil and gas statewide, but the smackover provision itself applies statewide by giving a statewide incentive to create new wells except in the smackover formation at a depth of 15,000 to 15,800 feet. Accordingly, Act No. 79-434 is a general law.

Based on the erroneous determination that Act No. 79-434 was a local law, the trial court held that Act No. 79-434 violated Section 106 of the Alabama Constitution because it was not published or posted as required by that section for local laws, that it violated Section 111 of the Alabama Constitution because Act No. 79-434 had been introduced as a general law and amended so as to be a local law and violated Section 105 of the Alabama Constitution because Act No. 79-434 was a local law which dealt with a subject covered by a general law. Since we have determined that Act No. 79-434 is a general law, there can be no conflict with any of these sections and we need not discuss these arguments in depth.

Act No. 79-434, Section 1(d)(e), reads as follows:

> Any person who is a royalty owner shall be exempt from the payment of any increase in taxes herein levied and shall not be liable therefor. (e) The privilege tax herein levied shall be absorbed and paid by those persons engaged in the business of producing or severing oil or gas only, and the producer shall not pass on the costs of such tax payments, either directly or indirectly, to the consumer; it being the express intent of this act that the tax herein levied shall be borne exclusively by the producer or severer of oil or gas.

The trial court held that because of the above-quoted royalty owner exemption and pass-through prohibition, Act No. 79-434 lacked uniformity and established arbitrary classifications in violation of the equal protection and due process clauses of the federal and state constitutions.

The appellees urge that there was no reasonable ground for exempting royalty owners from the increase and thus that the trial court correctly found the classification to be arbitrary. They contend that because Code of 1975, §20-20-1(8) includes royalty owners within the definition of the term "producers," the tax is being imposed unequally within the class of producers. This, they urge, is especially true since the pass-through prohibition precludes producers from passing the tax on to the consumers.

In *Haden v. Watson*, 270 Ala. 277, 117 So.2d 694 (1960) this Court discussed the power of the legislature to establish classifications for the purpose of license and excise taxes. There it was said:

> The legislature has the broadest range and powers in establishing classifications or subclassifications for the purpose of license and excise taxes. *State v. Pure Oil Co.*, supra ...
>
> Furthermore particular privileges, occupations, classes or subclass of businesses may be licensed and taxed and other privileges, occupations or businesses need not be included and can be entirely exempt therefrom. *Henry v. Shevinsky*, 239 Ala. 293, 195 So. 222; *State v. Pure Oil Co.*, supra.
>
> In other words the classification of occupations and privileges for taxation is largely a matter of legislative discretion, and it will not be interfered with by the courts as being in violation of the rules of equality and uniformity unless it is palpably arbitrary and unreasonable and unless there is no conceivable state of facts which would support it. *State v. Pure Oil Co.*, supra; *Carmichael v. Southern Coal & Coke Co.*, 301 U.S. 495, 57 S.Ct. 868, 81 L.Ed. 1245, 109 A.L.R. 1327; *Frazier v. State Tax Commission*, 234 Ala. 353, 175 So. 402, 110 A.L.R. 1479.

In the instant case the legislature sought to exclude

royalty owners from the increase in the severance tax. Admittedly royalty owners are a subclass of producers under Code of 1975, §40-20-1(8); however in *Haden, supra,* we noted that a distinction in the imposition of taxes can be made between subclassifications. Such a distinction will not be interfered with unless there is no conceivable set of facts to support it. Here it is conceivable that the exclusion of royalty owners from this increase in tax could encourage the development of new oil and gas wells. There being a conceivable reason to support the distinction, the legislative enactment should not be deemed arbitrary and should be upheld.

Similarly the trial court held the smackover provision to be an arbitrary and unconstitutional classification because the increase was limited only to the production from the depth of 15,000 to 15,800 feet. Since the legislature could have intended to encourage oil and gas production in other parts of the state and in other layers of the earth, we find this to be a reasonable distinction and hold this provision was not unconstitutional for this reason either.

The trial court also held that because of the royalty owner exemption and the pass-through prohibition, Act No. 79-434 was unconstitutional in that it impaired contractual obligations. The contractual obligations in question were leases which required royalty owners to pay their share of severance taxes, and sales contracts which required the purchasers to reimburse the plaintiffs for tax increases. The United States Supreme Court faced a similar situation in *Barwise v. Sheppard,* 299 U.S. 33, 57 S.Ct. 70, 79 L.Ed. 637 (1936) where it was said:

> Plainly no stipulation in the lease can be of

> any avail as against the power of the State to impose the tax, prescribe who shall be under a duty to the State to pay it, and fix the time and mode of payment. And this is true even though it be assumed to be admissible for the lessors and the lessee to stipulate as to who, as between themselves, shall ultimately bear the tax ...

Thus it is clear that parties to a private contract cannot limit a state's ability to levy taxes. This was recognized by the Alabama Supreme Court in *McPhillips Mfg. Co. v. Curry*, 241 Ala. 366, 2 So.2d 600 (1941) where it was said:

> The existence of an executory contract between or among two or more individuals presents no obstacle to the right or power of the State to levy or impose a tax which may adversely affect the financial interest of either or any of the parties which may have been acquired under or by reason of the mutual covenants of such parties to the contract ...

Thus, although one party to the contracts involved here may receive less than anticipated as a result of Act No. 79-434, such a decrease does not amount to an impairment of the contracts. The legislature must retain the authority to tax free from interference by the contracts of private persons. Act No. 79-434 does not unconstitutionally impair the contracts of the parties.

The trial court determined that Act No. 79-434 was an unconstitutional burden on interstate commerce and thus violated the United States Constitution. Specifical-

ly the trial court found that the pass-through prohibition violated Article I, Section 8, Clause 3 of the U.S. Constitution because Congress had preempted the field which the pass-through prohibition attempted to address. The trial court held that the Natural Gas Policy Act of 1978, codified at 15 U.S.C. §§3301-3432, prevented the legislature from mandating that the increased severance tax could not be passed on by the producers.

The Natural Gas Policy Act established maximum lawful prices at the well-head for all sales of natural gas. That Act in Section 3320 reads:

> [A] price for the first sale of natural gas shall not be considered to exceed the maximum lawful price applicable to the first sale of such natural gas under this part if such first sale price exceeds the maximum lawful price to the extent necessary to recover (1) state severance taxes attributable to the production of such natural gas and borne by the seller ...

Nowhere in that section is it stated that the oil companies are entitled to "pass-through" increases on state severance taxes. Rather, the Act merely provides that the lawful ceiling on the first sale at the wellhead may be raised if a severance tax is imposed by the states. The two Acts are aimed at entirely different purposes. In other words, although it would be perfectly permissible for the oil and gas companies to raise the price for the first sale of natural gas, subject to the limitations of the Natural Gas Policy Act, all that Act No. 79-434 requires is that the increase in severance tax mandated by that Act be borne by the producer or severer of the oil and gas. Thus the pass-through prohibition contained in Act

No. 79-434, does not conflict with the Natural Gas Policy Act of 1978, and the trial court's finding to that effect is due to be reversed.

The trial court declared that Act No. 79-434 was unconstitutional because it violated Section 45 of the Alabama Constitution of 1901 which provides that "[e]ach law shall contain but one subject which shall be clearly expressed in the title ..."

The title to Act No. 79-434 reads as follows:

> To amend Code of Alabama 1975, Sections 40-20-2 and 40-20-8, so as to increase the rate of tax; to provide further for distribution of the proceeds of the tax; and to provide certain exemptions from the increased rate.

The trial court declared that Act No. 79-434 covered more than one subject and that the title did not clearly express the subjects of the Act. Specifically the trial court found that the title did not make any reference to the following topics:

> 1. The purported consumer protection and/or pricing regulation in form of the prohibition against pass through contained in Section 1(e).
>
> 2. The provision requiring the "producer or severer" to absorb and pay the tax.
>
> 3. The extent of the increase of the tax.
>
> 4. The fact that the Act imposed differing tax rates on different production.

5. That producers would be required to bear the royalty owner's share of the tax.

6. The fact that the tax is not based on ownership of the mineral interest.

7. That purchasers would be prohibited from accounting for and paying the tax in derogation of the provisions of Section 40-20-3.

The purpose of Section 45 has generally been said to be to sufficiently disclose the subject of the Act so as to apprise the legislature and the public of the matter to be legislated therein. *Bozeman v. Conecuh County Board of Education*, 282 Ala. 543, 213 So.2d 388 (1968).

In *Boswell v. State*, 290 Ala. 349, 276 So.2d 592 (1973) this Court, quoting *Ballentyne v. Wickersham*, 75 Ala. 533 (1883), stated the rules governing the application of Section 45. There it was said:

> "[T]he title of a bill may be very general, and need not specify every clause in the statute. Sufficient if they are all referable, and cognate to the subject expressed. And when this subject is expressed in general terms, every thing which is necessary to make a complete enactment in regard to it, or which results as a complement of the thought contained in the general expression, is included in, and authorized by it." ...

In this case we find that the title of the Act was sufficient to meet the requirements of Section 45. The seven provisions which the trial court found not to be

included in the title are provisions which are necessary to make the enactment complete or at least are provisions which result as a complement of the thought contained in the general expression of the title. Therefore we hold that Act No. 79-434 does meet the requirements of Section 45.

The trial court held that Act No. 79-434 was "so vague, uncertain, indefinite, ambiguous, and conflicting with and repugnant to other existing provisions of other statutes that it cannot be enforced on any rational basis and, therefore, must be stricken." While we recognize that courts have the power to declare legislative enactments inoperative and void for indefiniteness or uncertainty, that power should only be exercised when the statute is so incomplete, or irreconcilably conflicting, or so vague and indefinite, that it cannot be executed, and the court is unable to determine with any reasonable degree of certainty what the legislature intended. *Jansen v. State ex rel. Downing*, 273 Ala. 166, 137 So.2d 47 (1962). We do not find this Act to be so defective.

Moreover, we note that in construing statutes courts must presume that statutes are constitutional and should not hold them unconstitutional unless they are convinced beyond a reasonable doubt of their unconstitutionality. *Alabama Dairy Commission v. Food Giant, Inc.*, Ala. 357 So.2d 139 (1978).

In *Brittain v. Weatherly*, 281 Ala. 683, 207 So.2d 667 (1968), quoting *State ex rel. Montgomery v. Merrill*, 218 Ala. 149, 117 So. 473 (1928), this Court said:

> "It is a well-recognized rule that it is the duty of the court to uphold a law when it is fairly susceptible of two interpretations,

> one of which maintains its constitutionality and the other strikes it down, though the adoption of the former be the less natural
> "

For this reason we find that the statute is not void for idenfiniteness or uncertainty.

Since we have determined that the provisions of Act No. 79-434 are constitutional, we do not need to address the question of whether the severability clause should have been used by the trial court to save this Act or portions thereof.

On the same day the trial court rendered the final order in this case, it granted partial summary judgment in favor of plaintiffs Warrior Drilling and Engineering Company, Inc., Pruet Production Company and Anderman Operating Company under the "26 barrel provision" of Act No. 79-434, which provides that "All wells producing less than 26 barrels of oil per day shall be taxed at the rate of four per centum (4%) of the gross value of said oil or gas at the point of production." The trial judge specifically found that the exemption in the Act refers to both oil or gas production. The trial court's order granting the partial summary judgments stated:

> Since the language of the exemption from the face of the Act is clear and unequivocal, and each of these Plaintiffs have proven that *only one or two of their wells at most produce more than 26 barrels* of oil per day, said Plaintiffs Warrior Drilling and Engineering Co., Inc., Pruet Production Company and Anderma Operating Company are entitled to judgment. [Emphasis added.]

While we agree that the exemption in the Act refers to all wells producing either oil or gas, the trial court's order granting partial summary judgment is illogical. Since the trial court recognizes that one or two of the plaintiffs' wells do produce more than 26 barrels of oil, it was improper to hold that Act No. 79-434 did not aply to those plaintiffs. For that reason the motion for partial summary judgment was improperly granted.

For the above reasons we hold that Act No. 79-434 was valid in its entirety and the order of the trial court must be and is hereby reversed and remanded.

REVERSED AND REMANDED.
All the Justices concur.

## Appendix B

## IN THE FIFTEENTH JUDICIAL CIRCUIT OF ALABAMA

## IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

| | | |
|---|---|---|
| EXCHANGE OIL AND GAS CORPORATION, a corporation, Plaintiff, | ) | Civil Action Nos. CV-79-1284-H |
| vs. | ) | CV-80-224-H, CV-80-568-H, |
| RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama, Defendant. | ) | CV-80-889 |
| CITMOCO SERVICES, INC., a corporation Plaintiff, | ) | |
| vs. | ) | Civil Action Nos. CV-79-1338-H |
| RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama, Defendant. | ) | |

| | | |
|---|---|---|
| EXXON CORPORATION, a corporation, | ) | |
| Plaintiff, | ) | Civil Action Nos. |
| | ) | CV-79-1529, |
| vs. | ) | CV-80-121, |
| | ) | CV-80-421 |
| RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama, | ) | CV-80-863-H |
| Defendant. | ) | |
| GETTY OIL COMPANY, a corporation, | ) | |
| Plaintiff, | ) | Civil Action Nos. |
| | ) | CV-79-1363-H |
| vs. | ) | CV-80-226-H |
| | ) | CV-80-565-H |
| RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama, | ) | CV-80-886-H |
| Defendant. | ) | |
| WARRIOR DRILLING AND ENGINEERING CO., INC., a corporation, | ) | |
| | ) | Civil Action Nos. |
| vs. | ) | CV-79-1509-H |
| | ) | CV-80-166-H |
| RALPH P. EAGERTON, JR., as Commissioner | ) | CV-80-520-H<br>CV-80-733-H |

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| of Revenue of the<br>State of Alabama,<br><br>Defendant. | ) | |
| GULF OIL CORPORATION, a corporation<br><br>Plaintiff,<br><br>vs.<br><br>RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama,<br><br>Defendant. | ) | Civil Action Nos.<br>CV-79-1622<br>CV-80-509 |
| THE LOUISIANA LAND AND EXPLORATION COMPANY, a corporation<br><br>Plaintiff,<br><br>vs.<br><br>RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama,<br><br>Defendant. | ) | Civil Action Nos.<br>CV-80-006,<br>CV-80-351 |
| MIDROC OPERATING COMPANY, a corporation | ) | |

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| Plaintiff, | ) | Civil Action Nos. |
| | ) | CV-80-168-H |
| vs. | ) | CV-80-517-H |
| | ) | CV-80-781-H |
| RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama, | ) | |
| Defendant. | ) | |
| PLACID OIL COMPANY, a corporation, | ) | |
| Plaintiff, | ) | Civil Action Nos. |
| | ) | CV-80-074-H |
| vs. | ) | CV-80-229-H |
| | ) | CV-80-567-H |
| RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama, | ) | CV-80-887-H |
| Defendant. | ) | |
| UNION OIL COMPANY OF CALIFORNIA, a corporation, | ) | |
| Plaintiff, | ) | Civil Action Nos. |
| | ) | CV-79-1383-H |
| vs. | ) | CV-80-225-H |
| | ) | CV-80-566-H |
| RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama, | ) | CV-80-888-H |

| | | |
|---|---|---|
| Defendant. | ) | |
| PETROLEUM CORPORATION OF TEXAS, a corporation, | ) | |
| Plaintiff, | ) | Civil Action Nos. |
| | ) | CV-79-1397-H |
| | ) | CV-80-228-H |
| vs. | ) | CV-80-569-H |
| | ) | CV-80-885-H |
| RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama, | ) | |
| Defendant. | ) | |
| PRUET PRODUCTION CO., a corporation, | ) | |
| | ) | Civil Action Nos. |
| vs. | ) | CV-79-1508-H |
| | ) | CV-80-165-H |
| RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama, | ) | CV-80-519-H |
| | ) | CV-80-780-H |
| Defendant. | ) | |
| TERRA RESOURCES, INC., a corporation, | ) | |
| Plaintiff, | ) | Civil Action Nos. |
| | ) | CV-79-1362-H |
| vs. | ) | CV-80-227-H |

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| | ) | CV-80-564-H |
| RALPH P. EAGERTON, | ) | CV-80-890-H |
| JR., as Commissioner | ) | |
| of Revenue of the | ) | |
| State of Alabama, | ) | |
| | ) | |
| Defendant. | ) | |
| | | |
| ANDERMAN OPERATING | ) | |
| CO., a corporation, | ) | |
| | ) | Civil Action Nos. |
| vs. | ) | CV-79-1510-H |
| | ) | CV-80-167-H |
| RALPH P. EAGERTON, | ) | CV-80-518-H |
| JR., as Commissioner | ) | CV-080-782-H |
| of Revenue of the | ) | |
| State of Alabama, | ) | |
| | ) | |
| Defendant. | ) | |

## FINAL OPINION AND JUDGMENT

This cause having come on for hearing before this Court on remand from the Supreme Court of Alabama and this Court having fully read and considered the opinion of the Supreme Court of Alabama entered herein on July 10, 1981 in *Eagerton v. Exchange Oil and Gas Corporation*, a rehearing thereon having been denied on September 4, 1981, the Court finds and orders as follows:

1. Under the opinion and mandate of the Supreme Court in *Eagerton v. Exchange Oil and Gas Corporation* all orders of this Court regarding the construction and unconstitutionality of Act 79-434 should be withdrawn

and vacated, except as to the findings and decrees of this Court with respect to Plaintiff's application and claim for taxation at the rate of 4% on all wells producing less than 26 barrels of oil per day based on the gross value of the oil and gas of those wells at the point of production.

2. The portion of Paragraph 1(a) of Act 79-434 which provided that "all wells producing less than 26 barrels of oil per day shall be taxed at the rate of four percent (4%) on the said value of said *oil* and *gas* at the point of production" taxes all wells which produce less than 26 barrels of oil per day at the rate of 4%. This language applies to wells producing either oil or gas and taxes their production at the 4% rate under the plain and unambiguous meaning of the language. If the legislature had intended to restrict the language only to oil wells, it would have made this provision applicable to "All *oil* wells" and would not have taxed production at the rate of 4% on the value of either "oil or gas at the point of production." Furthermore, in every instance, Act 79-434 makes reference to "oil and gas" except in the instance of taxing wells which produce less than 26 barrels of *oil* per day. In *Town of Loxley v. Rosita Water, Sewer and Fire Protection Authority, Inc.*, 376 So.2d 705 (Ala. 1979) the Supreme Court held that "...while specific language used by the legislature is subject to explanation, such language cannot be detracted from or added to." The plain meaning of this language must prevail because "when the intent of the legislature can be determined from the language of the statute itself, we need not resort to extraneous matters to determine the legislative intent." *Eagerton v. Exchange Oil and Gas Corporation*, 15 ABR 1796, at 1802.

"Courts can only learn what [the] legislature intended by what it has said, and have no right to stray into mazes

of conjecture or search for an imaginary purpose in [construing] the statutes." *Alabama Industrial Bank v. State ex Rel Avinger*, 286 Ala. 59, 237 So.2d 108 (1970). Thus, all wells which produce less than 26 barrels of oil as that term is defined by §40-20-1(4) Code of Alabama 1975 are taxed at the rate of 4% under Act. 79-434.

NOW THEREFORE, it is further ORDERED, ADJUDGED and DECREED by the Court that this Court's opinion and order of June 12, 1980, as amended by this Court's final judgment and decree on June 30, 1980, July 22, 1980, and July 28, 1980, are hereby withdrawn and vacated, EXCEPTING, and only excepting such portions, findings and decrees contained therein with respect to Plaintiff's application and claim for taxation at the rate of 4% under the provisions of §1(a) of Act 79-434 which provides as follows:

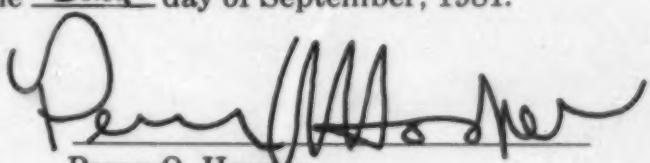
> "All wells producing less than 26 barrels of oil per day shall be taxed at the rate of four percent (4%) on the said value of said *oil* and *gas* at the point of production."

and it is further ORDERED, ADJUDGED and DECREED by the Court that §1(a) of Act 79-434 taxes all wells which produce less than 26 barrels of oil per day at the rate of 4% of the value of oil and gas at the point of production;
and it is further ORDERED, ADJUDGED and DECREED by the Court that Plaintiff, Terra Resources, Inc., is due and entitled to be refunded by the Defendant the sum of $276,508.53; that Plaintiff, Petroleum Corporation of Texas is due and entitled to be refunded the sum of $7,700.24; that Plaintiff, Pruet Production Company is due and entitled to be refunded the sum of $51,548.31; that Plaintiff, Warrior Drilling and Engineering Co.,

Inc. is due and entitled to be refunded the sum of $51,951.67; and that Plaintiff Anderman Operating Co. is due and entitled to be refunded the sum of $10,987.81 in accordance with §40-1-11 and §40-1-12, Code of Alabama 1975.

Costs of Court are hereby taxed in favor of the Defendant in all cases and against the individual oil company plaintiffs in their respective cases, for which execution may issue.

Done this the 30th day of September, 1981.



Perry O. Hooper
Circuit Judge

## Appendix C

## NOTICE OF APPEAL TO THE SUPREME COURT OF ALABAMA

## IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

## IN THE FIFTEENTH JUDICIAL CIRCUIT

| | | |
|---|---|---|
| EXCHANGE OIL AND GAS CORPORATION, a corporation, Plaintiff, | ) | Civil Action Nos. CV-79-1284-H |
| vs. | ) | CV-80-224-H, CV-80-568-H, |
| RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama, Defendant. | ) | CV-80-889 |
| CITMOCO SERVICES, INC., a corporation Plaintiff, | ) | |
| vs. | ) | Civil Action Nos. CV-79-1338-H |
| RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama, | ) | |

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|---|---|---|
| Defendant. | ) | |
| EXXON CORPORATION, a corporation, | ) | |
| Plaintiff, | ) | Civil Action Nos. |
| | ) | CV-79-1529, |
| vs. | ) | CV-80-121, |
| | ) | CV-80-421 |
| RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama, | ) | CV-80-863-H |
| Defendant. | ) | |
| GETTY OIL COMPANY, a corporation, | ) | |
| Plaintiff, | ) | Civil Action Nos. |
| | ) | CV-79-1363-H |
| vs. | ) | CV-80-226-H |
| | ) | CV-80-565-H |
| RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama, | ) | CV-80-886-H |
| Defendant. | ) | |
| WARRIOR DRILLING AND ENGINEERING CO., INC., a corporation, | ) | |
| | ) | Civil Action Nos. |
| vs. | ) | CV-79-1509-H |
| | ) | CV-80-166-H |

| | | |
|---|---|---|
| RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama, | ) | CV-80-520-H<br>CV-80-783-H |
| Defendant. | ) | |
| GULF OIL CORPORATION, a corporation | ) | |
| Plaintiff, | ) | |
| vs. | ) | Civil Action Nos.<br>CV-79-1622<br>CV-80-509 |
| RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama, | ) | |
| Defendant. | ) | |
| THE LOUISIANA LAND AND EXPLORATION COMPANY, a corporation | ) | |
| Plaintiff, | ) | Civil Action Nos.<br>CV-80-006,<br>CV-80-351 |
| vs. | ) | |
| RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama, | ) | |
| Defendant. | ) | |

| | | |
|---|---|---|
| MIDROC OPERATING COMPANY, a corporation | ) | |
| Plaintiff, | ) | Civil Action Nos. |
| | ) | CV-80-168-H |
| vs. | ) | CV-80-517-H |
| | ) | CV-80-781-H |
| RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama, | ) | |
| Defendant. | ) | |
| PLACID OIL COMPANY, a corporation, | ) | |
| Plaintiff, | ) | Civil Action Nos. |
| | ) | CV-80-074-H |
| vs. | ) | CV-80-229-H |
| | ) | CV-80-567-H |
| RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama, | ) | CV-80-887-H |
| Defendant. | ) | |
| UNION OIL COMPANY OF CALIFORNIA, a corporation, | ) | |
| Plaintiff, | ) | Civil Action Nos. |
| | ) | CV-79-1383-H |
| vs. | ) | CV-80-225-H |
| | ) | CV-80-566-H |

| | | |
|---|---|---|
| RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama, | ) | CV-80-888-H |
| Defendant. | ) | |
| PETROLEUM CORPORATION OF TEXAS, a corporation, | ) | |
| Plaintiff, | ) | Civil Action Nos. |
| | ) | CV-79-1397-H |
| | ) | CV-80-228-H |
| vs. | ) | CV-80-569-H |
| | ) | CV-80-885-H |
| RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama, | ) | |
| Defendant. | ) | |
| PRUET PRODUCTION CO., a corporation, | ) | |
| | ) | Civil Action Nos. |
| vs. | ) | CV-79-1508-H |
| | ) | CV-80-165-H |
| RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama, | ) | CV-80-519-H |
| | ) | CV-80-780-H |
| Defendant. | ) | |
| TERRA RESOURCES, | ) | |

| | | |
|---|---|---|
| INC., a corporation, | ) | |
| | ) | |
| Plaintiff, | ) | Civil Action Nos. |
| | ) | CV-79-1362-H |
| vs. | ) | CV-80-227-H |
| | ) | CV-80-564-H |
| RALPH P. EAGERTON, | ) | CV-80-890-H |
| JR., as Commissioner | ) | |
| of Revenue of the | ) | |
| State of Alabama, | ) | |
| | ) | |
| Defendant. | ) | |
| | | |
| ANDERMAN OPERATING | ) | |
| CO., a corporation, | ) | |
| | ) | Civil Action Nos. |
| vs. | ) | CV-79-1510-H |
| | ) | CV-80-167-H |
| RALPH P. EAGERTON, | ) | CV-80-518-H |
| JR., as Commissioner | ) | CV-080-782-H |
| of Revenue of the | ) | |
| State of Alabama, | ) | |
| | ) | |
| Defendant. | ) | |

## NOTICE OF APPEAL

Notice is hereby given that Ralph P. Eagerton, Jr., as Commissioner of Revenue of the State of Alabama appeals to the Supreme Court of Alabama from the Final Judgment of the Circuit Court of Montgomery County, Alabama, in the Fifteenth Judicial Circuit, Honorable Circuit Judge Perry Hooper, presiding, entered in the above-consolidated causes holding Act 79-434, *Acts of Alabama* 1979 Regular Session, unconsti-

tutional. The jurisdiction of the Supreme Court over the subject matter of this appeal is based upon the fact that the judgment in each of the above-styled causes exceeds $10,000.00.

Filed with this Notice of Appeal:

[x] Appellant has filed a $50.00 docket fee.

[x] Appellant is exempted by law from giving security for cost of appeal by virtue of §6-5-1, *Code of Alabama 1975.*

Filed November 2, 1981
Date

Certified as a true copy:
Pauline C. Eubanks
CIRCUIT CLERK

Charles A. Graddick
CHARLES A. GRADDICK,
Attorney General
State of Alabama

Herbert I. Burson, Jr.
HERBERT I. BURSON, JR.
Chief Counsel, Department of Revenue, and Assistant Attorney General, State of Alabama

John Breckenridge
JOHN J. BRECKENRIDGE,
Assistant Counsel, Department of Revenue, and Assistant Attorney General, State of Alabama

Charles E. Crumbley
CHARLES E. CRUMBLEY,

Assistant Counsel, Department of Revenue, and Assistant Attorney General, State of Alabama, 201 Administrative Building, Montgomery, AL 36130, Telephone: 832-5640

COUNSEL FOR APPELLANT

## DESIGNATION OF RECORD ON APPEAL

Appellant requests the Clerk to include the entire record (less those items set forth in Rule 10(a) in the Clerk's record.

## DESIGNATION OF REPORTER'S TRANSCRIPT

The reporter's transcript has previously been compiled and is a part of the record.

## CERTIFICATE OF FILING

I certify that I have this date filed with the Clerk of the trial court the original and three copies of the foregoing *Notice of Appeal* (along with a $50.00 docket fee) and such other instruments as have been completed and included herein, for service by the Clerk of a true copy thereof on each of the following:

1. The Clerk of the Supreme Court, together with the $50.00 docket fee.
2. Counsel for Appellees, Rae M. Crowe, Esq., Armbrecht, Jackson, DeMouy, Crowe, Holmes & Reeves, 1101 Merchants National Bank Building, P.O. Box 290, Mobile, Alabama, 36601.

Euel A. Screws, Jr., Esq., Copeland, Franco, Screws & Gill, P.O. Box 347, Montgomery, Alabama, 36101.

Robert C. Black, Esq., Hill, Hill, Carter, Franco, Cole &

Black, Second Floor, Hill Building, Montgomery, Alabama, 36104.

James R. Seale, Esq., Capell, Howard, Knabe & Cobbs, P.O. Box 2069, Montgomery, Alabama, 36103.

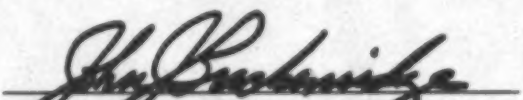
Macbeth Wagon, Jr., Esq., Bradley, Arant, Rose & White, 1500 Brown-Marx Building, Birmingham, Alabama, 35203.

L. Murray Alley, Esq., Cabaniss, Johnston, Gardner, Dumas & O'Neal, 1900 First National-Southern Natural Building, Birmingham, Alabama, 35203.

Edward S. Allen, Esq., Balch, Bingham, Baker, Hawthorne, Williams & Ward, P.O. Box 306, Birmingham, Alabama, 35201.

Porter, Gonzalez & Rogers, 1800 Guaranty Bank Plaza, Corpus Christi, Texas, 78475.

Dated this the 2nd day of November, 1981.



JOHN J. BRECKENRIDGE
ATTORNEY FOR APPELLANT

**Appendix D**

OFFICE OF
CLERK OF THE SUPREME COURT
STATE OF ALABAMA
MONTGOMERY

MAILING ADDRESS:
P. O. Box 157
Montgomery, Alabama 36101
Telephone: 832-6480

November 10, 1981

Re: 81-128

RALPH P. EAGERTON, JR., etc.
Appellant

vs.

EXCHANGE OIL AND GAS CORPORATION, et al
Appellees

You are hereby notified that the following indicated action was taken in the above cause by the Supreme Court today:

Appeal docketed. Future correspondence should refer to the above number.

Clerk, Supreme Court of Alabama

## Appendix E

## IN THE FIFTEENTH JUDICIAL CIRCUIT OF ALABAMA

## IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

| | | |
|---|---|---|
| EXCHANGE OIL AND GAS CORPORATION, a corporation, | * | |
| Plaintiff, | * | Civil Action Nos. |
| | * | CV-79-1284-H |
| vs. | * | CV-80-224-H, |
| | * | CV-80-568-H, |
| RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama, | * | CV-80-889 |
| Defendant. | * | |
| CITMOCO SERVICES, INC., a corporation | * | |
| Plaintiff, | * | |
| vs. | * | Civil Action Nos. |
| | * | CV-79-1338-H |
| RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama, | * | |
| Defendant. | * | |

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|---|---|---|
| EXXON CORPORATION, a corporation, | * | |
| Plaintiff, | * | Civil Action Nos. |
| | * | CV-79-1529, |
| vs. | * | CV-80-121, |
| | * | CV-80-421 |
| RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama, | * | CV-80-863-H |
| Defendant. | * | |
| GETTY OIL COMPANY, a corporation, | * | |
| Plaintiff, | * | Civil Action Nos. |
| | * | CV-79-1363-H |
| vs. | * | CV-80-226-H |
| | * | CV-80-565-H |
| RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama, | * | CV-80-886-H |
| Defendant. | * | |
| WARRIOR DRILLING AND ENGINEERING CO., INC., a corporation, | * | |
| | * | Civil Action Nos. |
| vs. | * | CV-79-1509-H |
| | * | CV-80-166-H |
| RALPH P. EAGERTON, JR., as Commissioner | * | CV-80-520-H<br>CV-80-783-H |

| | | |
|---|---|---|
| of Revenue of the<br>State of Alabama,<br><br>Defendant. | * | |
| GULF OIL CORPORATION, a corporation<br><br>Plaintiff,<br><br>vs.<br><br>RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama,<br><br>Defendant. | * | Civil Action Nos.<br>CV-79-1622<br>CV-80-509 |
| THE LOUISIANA LAND AND EXPLORATION COMPANY, a corporation<br><br>Plaintiff,<br><br>vs.<br><br>RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama,<br><br>Defendant. | * | Civil Action Nos.<br>CV-80-006,<br>CV-80-351 |
| MIDROC OPERATING COMPANY, a corporation | * | |

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| | * | |
| Plaintiff, | * | Civil Action Nos. |
| | * | CV-80-168-H |
| vs. | * | CV-80-517-H |
| | * | CV-80-781-H |
| RALPH P. EAGERTON, | * | |
| JR., as Commissioner | * | |
| of Revenue of the | * | |
| State of Alabama, | * | |
| | * | |
| Defendant. | * | |
| | | |
| PLACID OIL COMPANY, | * | |
| a corporation, | * | |
| | * | |
| Plaintiff, | * | Civil Action Nos. |
| | * | CV-80-074-H |
| vs. | * | CV-80-229-H |
| | * | CV-80-567-H |
| RALPH P. EAGERTON, | * | CV-80-887-H |
| JR., as Commissioner | * | |
| of Revenue of the | * | |
| State of Alabama, | * | |
| | * | |
| Defendant. | * | |
| | | |
| UNION OIL COMPANY | * | |
| OF CALIFORNIA, | * | |
| a corporation, | * | |
| | * | |
| Plaintiff, | * | Civil Action Nos. |
| | * | CV-79-1383-H |
| vs. | * | CV-80-225-H |
| | * | CV-80-566-H |
| RALPH P. EAGERTON, | * | CV-80-888-H |
| JR., as Commissioner | * | |
| of Revenue of the | * | |
| State of Alabama, | * | |

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|---|---|---|
| | * | |
| Defendant. | * | |
| | * | |
| PETROLEUM CORPORATION OF TEXAS, a corporation, | * | |
| | * | |
| | * | |
| Plaintiff, | * | Civil Action Nos. |
| | * | CV-79-1397-H |
| | * | CV-80-228-H |
| vs. | * | CV-80-569-H |
| | * | CV-80-885-H |
| RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama, | * | |
| | * | |
| | * | |
| | * | |
| Defendant. | * | |
| | * | |
| PRUET PRODUCTION CO., a corporation, | * | |
| | * | |
| | * | Civil Action Nos. |
| vs. | * | CV-79-1508-H |
| | * | CV-80-165-H |
| RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama, | * | CV-80-519-H |
| | * | CV-80-780-H |
| | * | |
| | * | |
| | * | |
| Defendant. | * | |
| | * | |
| TERRA RESOURCES, INC., a corporation, | * | |
| | * | |
| | * | |
| Plaintiff, | * | Civil Action Nos. |
| | * | CV-79-1362-H |
| vs. | * | CV-80-227-H |

| | | |
|---|---|---|
| | * | CV-80-564-H |
| RALPH P. EAGERTON, | * | CV-80-890-H |
| JR., as Commissioner | * | |
| of Revenue of the | * | |
| State of Alabama, | * | |
| | * | |
| Defendant. | * | |
| | | |
| ANDERMAN OPERATING | * | |
| CO., a corporation, | * | |
| | * | Civil Action Nos. |
| vs. | * | CV-79-1510-H |
| | * | CV-80-167-H |
| RALPH P. EAGERTON, | * | CV-80-518-H |
| JR., as Commissioner | * | CV-080-782-H |
| of Revenue of the | * | |
| State of Alabama, | * | |
| | * | |
| Defendant. | * | |

## NOTICE OF APPEAL

Notice is hereby given that Exchange Oil and Gas Corporation, Getty Oil Company, Warrior Drilling and Engineering Co., Inc., Midroc Operating Company, Placid Oil Company, Union Oil Company of California, Pruet Production Co., and Anderman Operating Co. appeal to the Supreme Court of Alabama from the Final Judgment of the Circuit Court of Montgomery County, Alabama, in the Fifteenth Judicial Circuit, Honorable Circuit Judge Perry Hooper, presiding, entered in the above-consolidated causes on September 30, 1981. The jurisdiction of the Supreme Court over the subject

matter of this appeal is based upon the fact that the judgment in each of the above-styled causes exceeds $10,000.00 and equitable relief is involved.

Filed November 12, 1981.

Certified as a true Copy:

Pauline C. Eubanks

Circuit Clerk

Euel A. Screws, Jr.

Euel A. Screws, Jr.
Attorney for Exchange Oil and Gas Corporation, Getty Oil Company, Placid Oil Company, and Union Oil Company of California

Of counsel:
Copeland, Franco, Screws
& Gill, P.A.
Post Office Box 347
Montgomery, Alabama 36101

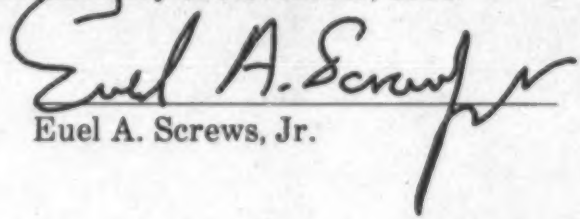
James R. Seale

James R. Seale
Attorney for Warrior Drilling and Engineering Co., Inc., Midroc Operating Company, Pruet Production Co., and Anderman Operating Co.

Of counsel:
Capell, Howard, Knabe
& Cobbs, P.A.
Post Office Box 2069
Montgomery, Alabama 36103

## Certificate of Service

I hereby certify that I have served a copy of the foregoing on all counsel of record by mailing them a copy of same by First Class United States Mail, postage prepaid, on this the 12th day of November, 1981.



Euel A. Screws, Jr.

**IN THE FIFTEENTH JUDICIAL CIRCUIT OF ALABAMA**

**IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA**

| | | |
|---|---|---|
| EXCHANGE OIL AND GAS CORPORATION, a corporation, | * | |
| Plaintiff, | * | Civil Action Nos. |
| | * | CV-79-1284-H |
| vs. | * | CV-80-224-H, |
| | * | CV-80-568-H, |
| RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama, | * | CV-80-889 |
| Defendant. | * | |
| CITMOCO SERVICES, INC., a corporation | * | |
| Plaintiff, | * | |
| vs. | * | Civil Action Nos. |
| | * | CV-79-1338-H |
| RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama, | * | |
| Defendant. | * | |
| EXXON CORPORATION, a corporation, | * | |

| | | |
|---|---|---|
| Plaintiff, | * | Civil Action Nos. |
| | * | CV-79-1529, |
| vs. | * | CV-80-121, |
| | * | CV-80-421 |
| RALPH P. EAGERTON, | * | CV-80-863-H |
| JR., as Commissioner | * | |
| of Revenue of the | * | |
| State of Alabama, | * | |
| | * | |
| Defendant. | * | |
| GETTY OIL COMPANY, | * | |
| a corporation, | * | |
| | * | |
| Plaintiff, | * | Civil Action Nos. |
| | * | CV-79-1363-H |
| vs. | * | CV-80-226-H |
| | * | CV-80-565-H |
| RALPH P. EAGERTON, | * | CV-80-886-H |
| JR., as Commissioner | * | |
| of Revenue of the | * | |
| State of Alabama, | * | |
| | * | |
| Defendant. | * | |
| WARRIOR DRILLING | * | |
| AND ENGINEERING CO., | * | |
| INC., a corporation, | * | |
| | * | Civil Action Nos. |
| vs. | * | CV-79-1509-H |
| | * | CV-80-166-H |
| RALPH P. EAGERTON, | * | CV-80-520-H |
| JR., as Commissioner | * | CV-80-783-H |
| of Revenue of the | * | |
| State of Alabama, | * | |
| | * | |

| | | |
|---|---|---|
| Defendant. | * | |
| GULF OIL CORPORATION, a corporation | * | |
| Plaintiff, | * | |
| vs. | * | Civil Action Nos. CV-79-1622 CV-80-509 |
| RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama, | * | |
| Defendant. | * | |
| THE LOUISIANA LAND AND EXPLORATION COMPANY, a corporation | * | |
| Plaintiff, | * | Civil Action Nos. CV-80-006, |
| vs. | * | CV-80-351 |
| RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama, | * | |
| Defendant. | * | |
| MIDROC OPERATING COMPANY, a corporation | * | |
| Plaintiff, | * | Civil Action Nos. CV-80-168-H |

| | | |
|---|---|---|
| vs. | * | CV-80-517-H |
| | * | CV-80-781-H |
| RALPH P. EAGERTON, | * | |
| JR., as Commissioner | * | |
| of Revenue of the | * | |
| State of Alabama, | * | |
| | * | |
| Defendant. | * | |
| PLACID OIL COMPANY, | * | |
| a corporation, | * | |
| | * | |
| Plaintiff, | * | Civil Action Nos. |
| | * | CV-80-074-H |
| vs. | * | CV-80-229-H |
| | * | CV-80-567-H |
| RALPH P. EAGERTON, | * | CV-80-887-H |
| JR., as Commissioner | * | |
| of Revenue of the | * | |
| State of Alabama, | * | |
| | * | |
| Defendant. | * | |
| UNION OIL COMPANY | * | |
| OF CALIFORNIA, | * | |
| a corporation, | * | |
| | * | |
| Plaintiff, | * | Civil Action Nos. |
| | * | CV-79-1383-H |
| vs. | * | CV-80-225-H |
| | * | CV-80-566-H |
| RALPH P. EAGERTON, | * | CV-80-888-H |
| JR., as Commissioner | * | |
| of Revenue of the | * | |
| State of Alabama, | * | |
| | * | |

| | | |
|---|---|---|
| Defendant. | * | |
| PETROLEUM CORPORATION OF TEXAS, a corporation, | * | |
| Plaintiff, | * | Civil Action Nos. |
| | * | CV-79-1397-H |
| | * | CV-80-228-H |
| vs. | * | CV-80-569-H |
| | * | CV-80-885-H |
| RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama, | * | |
| Defendant. | * | |
| PRUET PRODUCTION CO., a corporation, | * | |
| | * | Civil Action Nos. |
| vs. | * | CV-79-1508-H |
| | * | CV-80-165-H |
| RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama, | * | CV-80-519-H |
| | * | CV-80-780-H |
| Defendant. | * | |
| TERRA RESOURCES, INC., a corporation, | * | |
| Plaintiff, | * | Civil Action Nos. |
| | * | CV-79-1362-H |
| vs. | * | CV-80-227-H |

| | | |
|---|---|---|
| | * | CV-80-564-H |
| RALPH P. EAGERTON, | * | CV-80-890-H |
| JR., as Commissioner | * | |
| of Revenue of the | * | |
| State of Alabama, | * | |
| | * | |
| Defendant. | * | |
| | | |
| ANDERMAN OPERATING | * | |
| CO., a corporation, | * | |
| | * | Civil Action Nos. |
| vs. | * | CV-79-1510-H |
| | * | CV-80-167-H |
| RALPH P. EAGERTON, | * | CV-80-518-H |
| JR., as Commissioner | * | CV-080-782-H |
| of Revenue of the | * | |
| State of Alabama, | * | |
| | * | |
| Defendant. | * | |

## SECURITY FOR COSTS

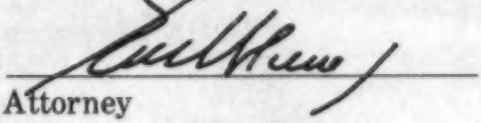
We hereby acknowledge ourselves security for costs of appeal. For the payment of all costs secured by this undertaking, we hereby waive our right of exemption as to personal property under the Constitution and Laws of the State of Alabama

Executed with our seals this 19th day of November, 1981.

EXCHANGE OIL AND GAS CORPORATION
Appellant-Surety

By
Its Attorney

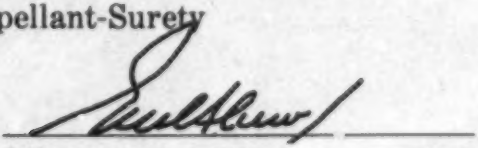
GETTY OIL COMPANY
Appellant-Surety

By 
Its Attorney

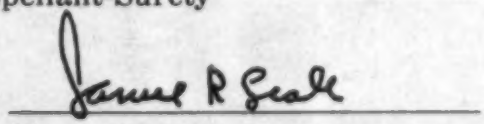
PLACID OIL COMPANY
Appelant-Surety

By
Its Attorney

UNION OIL COMPANY OF
CALIFORNIA
Appellant-Surety

By 
Its Attorney

WARRIOR DRILLING AND
ENGINEERING CO., INC.
Appellant-Surety

By 
Its Attorney

MIDROC OPERATING
COMPANY
Appellant-Surety

By James R Seale
Its Attorney

PRUET PRODUCTION CO.
Appellant-Surety

By James R Seale
Its Attorney

ANDERMAN OPERATING CO.
Appellant-Surety

By James R Seale
Its Attorney

L.S.
Surety

L.S.
Surety

L.S.
Surety

L.S.
Surety

Filed and approved:

Nov. 18, 1981

Pauline C. Edwards

Clerk

**IN THE FIFTEENTH JUDICIAL CIRCUIT OF ALABAMA**

**IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA**

| | | |
|---|---|---|
| EXCHANGE OIL AND GAS CORPORATION, a corporation, | * | |
| Plaintiff, | * | Civil Action Nos. |
| | * | CV-79-1284-H |
| vs. | * | CV-80-224-H, |
| | * | CV-80-568-H, |
| RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama, | * | CV-80-889 |
| Defendant. | * | |
| CITMOCO SERVICES, INC., a corporation | * | |
| Plaintiff, | * | |
| vs. | * | Civil Action Nos. |
| | * | CV-79-1338-H |
| RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama, | * | |
| Defendant. | * | |

| | | |
|---|---|---|
| EXXON CORPORATION, a corporation, | * | |
| Plaintiff, | * | Civil Action Nos. |
| | * | CV-79-1529, |
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| | * | CV-80-421 |
| RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama, | * | CV-80-863-H |
| Defendant. | * | |
| GETTY OIL COMPANY, a corporation, | * | |
| Plaintiff, | * | Civil Action Nos. |
| | * | CV-79-1363-H |
| vs. | * | CV-80-226-H |
| | * | CV-80-565-H |
| RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama, | * | CV-80-886-H |
| Defendant. | * | |
| WARRIOR DRILLING AND ENGINEERING CO., INC., a corporation, | * | |
| | * | Civil Action Nos. |
| vs. | * | CV-79-1509-H |
| | * | CV-80-166-H |
| RALPH P. EAGERTON, JR., as Commissioner | * | CV-80-520-H |
| | * | CV-80-783-H |

of Revenue of the
State of Alabama,

Defendant.

GULF OIL CORPORATION, a corporation

Plaintiff,

vs.

RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama,

Defendant.

THE LOUISIANA LAND AND EXPLORATION COMPANY, a corporation

Plaintiff,

vs.

RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama,

Defendant.

MIDROC OPERATING COMPANY, a corporation

Civil Action Nos.
CV-79-1622
CV-80-509

Civil Action Nos.
CV-80-006,
CV-80-351

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| | * | |
| Plaintiff, | * | Civil Action Nos. |
| | * | CV-80-168-H |
| vs. | * | CV-80-517-H |
| | * | CV-80-781-H |
| RALPH P. EAGERTON, | * | |
| JR., as Commissioner | * | |
| of Revenue of the | * | |
| State of Alabama, | * | |
| | * | |
| Defendant. | * | |
| | | |
| PLACID OIL COMPANY, | * | |
| a corporation, | * | |
| | * | |
| Plaintiff, | * | Civil Action Nos. |
| | * | CV-80-074-H |
| vs. | * | CV-80-229-H |
| | * | CV-80-567-H |
| RALPH P. EAGERTON, | * | CV-80-887-H |
| JR., as Commissioner | * | |
| of Revenue of the | * | |
| State of Alabama, | * | |
| | * | |
| Defendant. | * | |
| | | |
| UNION OIL COMPANY | * | |
| OF CALIFORNIA, | * | |
| a corporation, | * | |
| | * | |
| Plaintiff, | * | Civil Action Nos. |
| | * | CV-79-1383-H |
| vs. | * | CV-80-225-H |
| | * | CV-80-566-H |
| RALPH P. EAGERTON, | * | CV-80-888-H |
| JR., as Commissioner | * | |
| of Revenue of the | * | |

| | | |
|---|---|---|
| State of Alabama, | * | |
| | * | |
| Defendant. | * | |
| PETROLEUM CORPORATION OF TEXAS, a corporation, | * | |
| | * | |
| | * | |
| | * | |
| Plaintiff, | * | Civil Action Nos. |
| | * | CV-79-1397-H |
| | * | CV-80-228-H |
| vs. | * | CV-80-569-H |
| | * | CV-80-885-H |
| RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama, | * | |
| | * | |
| | * | |
| | * | |
| | * | |
| Defendant. | * | |
| PRUET PRODUCTION CO., a corporation, | * | |
| | * | |
| | * | Civil Action Nos. |
| vs. | * | CV-79-1508-H |
| | * | CV-80-165-H |
| RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama, | * | CV-80-519-H |
| | * | CV-80-780-H |
| | * | |
| | * | |
| | * | |
| Defendant. | * | |
| TERRA RESOURCES, INC., a corporation, | * | |
| | * | |
| | * | |
| Plaintiff, | * | Civil Action Nos. |

| | | |
|---|---|---|
| | * | CV-79-1362-H |
| vs. | * | CV-80-227-H |
| | * | CV-80-564-H |
| RALPH P. EAGERTON, | * | CV-80-890-H |
| JR., as Commissioner | * | |
| of Revenue of the | * | |
| State of Alabama, | * | |
| | * | |
| Defendant. | * | |
| | | |
| ANDERMAN OPERATING | * | |
| CO., a corporation, | * | |
| | * | Civil Action Nos. |
| vs. | * | CV-79-1510-H |
| | * | CV-80-167-H |
| RALPH P. EAGERTON, | * | CV-80-518-H |
| JR., as Commissioner | * | CV-080-782-H |
| of Revenue of the | * | |
| State of Alabama, | * | |
| | * | |
| Defendant. | * | |

## DESIGNATION OF RECORD ON APPEAL

**Designation of Clerk's Record**

Appellant requests the clerk to include the following checked materials in the clerk's record:

Entire record [less those items set forth in Rule 10(a)]

**Designation of Reporter's Transcript**

Appellant requests Margaret May, Court Reporter,

Montgomery County Courthouse, 142 Washington Avenue, Montgomery, Alabama, 36104, 832-4950, to transcribe an original and 1 copy of the following as the reporter's transcript:

> All transcribed proceedings and testimony.
>
> NOTE: These proceedings have heretofore been transcribed and prepared as part of the record in an earlier appeal.

## CERTIFICATE OF FILING

I certify that on November 12, 1981, I filed with the Clerk of the trial court the original and 8 copies of the notice of appeal (along with the required docket fee) and on this 18th day of November, 1981, this Designation of Record and Certificate of Filing have been completed and included herein, for service by the Clerk of a true copy thereof on each of the following:

1. Clerk of the appellate court
2. Court reporter
3. Counsel for appellee.

Euel A. Screws, Jr.
Attorney for Exchange Oil and Gas Corporation, Getty Oil Company, Placid Oil Company and Union Oil Company of California

Of counsel:
Copeland, Franco, Screws

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Of counsel:
Capell, Howard, Knabe
& Cobbs, P.A.
Post Office Box 2069
Montgomery, Alabama 36103

**Certificate of Service**

I hereby certify that I have served a copy of the foregoing on all counsel of record by mailing them a copy of same by First Class United States Mail, postage prepaid, on this the 18th day of November, 1981.

Euel A. Screws, Jr.

**Appendix F**

OFFICE OF
CLERK OF THE SUPREME COURT
STATE OF ALABAMA
MONTGOMERY

MAILING ADDRESS:
P. O. Box 157
Montgomery, Alabama 36101
Telephone: 832-6480

November 10, 1981

Re: 81-128

RALPH P. EAGERTON, JR., etc.
Appellant

vs.

EXCHANGE OIL AND GAS CORPORATION, et al
Appellees

You are hereby notified that the following indicated action was taken in the above cause by the Supreme Court today:

Appeal docketed. Future correspondence should refer to the above number.

J. A. Sentell

Clerk, Supreme Court of Alabama

# Appellant's Reply Brief

No. 81-1268

Office - Supreme Court, U.S.
FILED
FEB 17 1982
ALEXANDER L. STEVAS,
CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1981

EXCHANGE OIL AND GAS CORPORATION, et al.,
Appellants,

versus

RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama,
Appellee.

---

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF ALABAMA

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## BRIEF IN OPPOSITION TO MOTION TO DISMISS APPEAL

---

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COUNSEL FOR APPELLANTS

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81-1268

IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1981

EXCHANGE OIL & GAS CORPORATION,
GETTY OIL COMPANY & UNION OIL COMPANY OF
CALIFORNIA

Appellants,

VERSUS

RALPH P. EAGERTON, JR., AS COMMISSIONER
OF REVENUE OF THE STATE OF ALABAMA,

Appellee

# BRIEF IN OPPOSITION TO MOTION TO DISMISS APPEAL

MAY IT PLEASE THE COURT:

Exchange Oil & Gas Corporation, Getty Oil Company, and Union Oil Company of California, pursuant to Rule 16.5 of the Rules of the United States Supreme Court, file this, their Brief in Opposition to Appellee's Motion to Dismiss this Appeal, in order to demonstrate that the Motion is entirely groundless and without substance in either law or fact.

## ISSUE PRESENTED BY APPELLEE'S MOTION TO DISMISS

Whether the Alabama Supreme Court's judgment which "reversed" the lower court as to the separate constitutional issues asserted by these three Appellants, but also "remanded"

another unrelated issue of fact and state law affecting five other parties (who are not parties to this Appeal), is a "final judgment" with respect to the separate constitutional questions.

## SUMMARY OF ARGUMENT

Appellee's Motion to Dismiss is not well taken because the remaining proceedings in the Alabama Courts involve (a) different parties, (b) separate and non-related state issues, and (c) different cases, which were only consolidated for trial and for appeal. Even though further state proceedings remain in the lower state courts, where there is a final determination of federal constitutional questions and there are no further federal questions to be raised in the remaining litigation, the Supreme Court has, in numerous cases, deemed judgment on the constitutional issues final for purposes of 28 U.S.C. §1257. Appellee's Motion to Dismiss the Appeal is due to be denied.

## CASE AND FACTS

The ruling and decision of the Alabama Supreme Court from which this Appeal is taken is set forth in Appellants' Appendix (i) to their Jurisdictional Statement and is reported as *Eagerton v. Exchange Oil & Gas Corp.*, 404 So.2d 1 (Ala. 1981). That decision was the result of fourteen separate suits for refund of severance taxes paid pursuant to Act 79-434, filed by individual producers of oil and gas and consolidated for hearing before the trial court. 1/ (The

---

1/ Twelve cases were consolidated by the Circuit Judge's Order. Thereafter, two additional cases were filed, and these were added to the cases previously consolidated.

Order of Consolidation by the trial court is attached as Supplemental Appendix (i). ) Further, after appeals by the Commissioner from the trial court's decision, the cases were again consolidated for consideration by the Alabama Supreme Court. Thus, the parties to the appeal in the Alabama Supreme Court were all differently situated, and the appeal arose from entirely separate actions. In fact, five of the producers, not Appellants herein, claimed a right to be taxed at the lower rate (4% rather than 6%) under the so-called "26 barrel provisions, because their wells produced less than 26 barrels of oil or gas per day.

In its decision on the consolidated appeal, the Alabama Supreme Court, without equivocation, squarely ruled on the four constitutional issues made the subject of Appellants' Jurisdictional Statement, and ***"reversed"*** the trial court on those four points. However, the Alabama Supreme Court ***"remanded"*** on one point, viz: the trial court's application of the 26 barrel provision in Act 79-434. *Id.* at p. 8 (See headnote 10) (Appellants' Appendix (i), pp. 34-37). The 26 barrel provision is as follows:

> ***All*** wells producing less than 26 barrels of oil per day shall be taxed at the rate of four percentum (4%) of the gross value of said ***oil or gas*** at the point of production.

Acts of Ala. No. 79-434 (Appendix (v), p. 19).

In connection with this provision, the Commissioner had contended that the 26 barrels referred only to *oil* wells and not to *all* wells (including gas wells). Thus, the issue raised by the 26 barrel provision is entirely and totally separate from, and unrelated to, the four federal constitutional questions made the subject of this Appeal, as set forth in Appellants' Jurisdictional Statement.

Just prior to trial of the case, the trial court granted summary judgment in favor of certain producers (Warrior Drilling & Engineering Co., Inc., Anderman Operating Co., and Pruet Production Co., which are not parties to this appeal) based on those producers' claim that their production was less than 26 barrels per day and that they were entitled to be taxed at the rate of 4% under the 26 barrel provision included in Act 79-434. On appeal, the Alabama Supreme Court held that the 26 barrel provision applied to "all wells producing either oil or gas" 2/, *Id.* at p. 8, (Appellants' Appendix (i), p. 36), but, in passing on the propriety of the summary judgment, the Supreme Court of Alabama remanded as to those producers claiming benefit of the 26 barrel provision, because the partial summary judgment was granted on proof which showed that some of the producers' wells *did produce more than 26 barrels of oil per day*. 3/ *Id.* at p. 8. (Appellants' Appendix (i), pp. 35-36).

---

2/ "The trial judge specifically found that the [26 barrel] exemption in the Act refers to both oil and gas production." *Eagerton v. Exchange Oil & Gas Corp.*, 404 So. 2d 1, 8 (Ala. 1981).

3/ In this connection the Alabama Supreme Court wrote:

> The trial court's order granting the partial summary judgments stated:
>
> > Since the language of the exemption from the face of the Act is clear and unequivocal, and each of these Plaintiffs have *proven* that *only one or two of their wells at most produce more than 26 barrels* of oil per day, said Plaintiffs Warrior Drilling and Engineering Co., Inc., Pruet Production Company and Anderman Operating Company are entitled to judgment.
> > [Emphasis added]
>
> While we agree that the exemption in the Act refers to all wells producing either oil or gas, the trial court's order granting partial summary judgment is illogical.

*Id.*

Upon remand to the Circuit Court of Montgomery County, this single issue was addressed, and the trial applied the 26 barrel provision, as interpreted by the Alabama Supreme Court. After identifying which wells produced less than 26 barrels of oil or gas per day, the trial court entered money judgments in favor of each of the producers as to such of their wells producing less than 26 barrels. Thus, the trial court not only ruled on the application of the 26 barrel provision, but also, as mandated by the Alabama Supreme Court opinion, withdrew and vacated its prior ruling that Act 79-434 was violative of the federal Constitution on the grounds made the subject of this Appeal. (See the trial court's Final Order and Decree at Appellee's Appendix B.)

Subsequently, the Commissioner of Revenue (Appellee herein) filed Notice of Appeal to the Alabama Supreme Court, and in his Brief, he again contends that the 26 barrel provision applies only to *oil* wells and not to *gas* wells. These Appellants filed Notices of Cross-appeal. However, contrary to the Commissioner's Brief in support of his Motion to Dismiss, the Cross-Appeals are not currently pending before the Alabama Supreme Court, because they were dismissed on motion of Cross-Appellants (Appellants), before briefs were filed by any party. (A copy of the Motion to Dismiss Cross-Appeals is attached hereto as Supplemental Appendix (ii).)

The Commissioner's Brief, on the second appeal to the Alabama Supreme Court, deals solely with the statutory construction of the 26 barrel provision. Likewise, the Appellees in the Alabama Supreme Court (producers), Warrior, Pruet, Anderman, Terra, and Petroleum Corporation of Texas, filed briefs which deal only with the proper construction of the 26 barrel provision. (A copy of the Statement of Issues Presented, from the Commissioner's Brief, is attached as Supplemental Appendix (iii), and a copy of the State-

ment of Issues Presented, from Appellee's Briefs, are attached as Appendix (iv).) Additionally, the above-mentioned producers have all filed Motions to Dismiss the Commissioner's Appeal to the Alabama Supreme Court on the grounds that, in *Eagerton v. Exchange Oil & Gas Corp.*, 404 So.2d 1 (Ala. 1981), the court had already determined that the 26 barrel provision applied to both oil and gas wells. (A copy of those producers' Motion to Dismiss the Commissioner's Appeal is attached as Supplemental Appendix (v).) This Motion is under submission at the present time.

To summarize, the appeal taken by the Commissioner to the Alabama Supreme Court from the trial court's judgment on remand (with respect to the 26 barrel provision) is now pending, subject to the Motion to Dismiss. That appeal involves entirely different parties and does not involve these Appellants; that appeal deals only with a separate state question of statutory interpretation, not in any way raised before this Honorable Court; that appeal involves no constitutional question whatsoever; and, finally, that appeal is in all respects moot and in all probability will be dismissed.

## ARGUMENT

As is apparent from the facts stated above, no federal constitutional issues are presently before the Alabama Supreme Court in this case, and, indeed, the federal questions submitted to this Court can in no manner be raised for a second time before any state court, for the simple reason that those questions were all decided dispositively and without equivocation by the Alabama Supreme Court in the first appeal of the case. It was the Alabama Court's decision as to the four constitutional questions made subject of the Appellants' Jurisdictional Statement which required this Appeal.

Thus, an examination of the case and facts makes it

abundantly clear that the Commissioner's Motion to Dismiss this appeal is frivilous and dilatory. If, because one portion of a case is remanded for certain factual determinations on an unrelated non-federal question, the federal constitutional questions conclusively decided by the highest state court are not final, no appeal can ever be taken. Under what has to be the Commissioner's tongue and cheek argument, the remand of one unrelated non-federal constitutional question carries with it to the court below all of the constitutional questions previously and finally decided by the Appellate Court. Of course, this cannot be the law - Appellants will have no way of preserving the constitutional questions for later review, because there are no issues, as to these Appellants, left for retrial. If these Appellants had delayed filing a Notice of Appeal until resolution of the 26 barrel question (either by the Motion to Dismiss or by rendition of a subsequent opinion), their time for appeal of the first decision of the Alabama Supreme Court would have long since expired, and undoubtedly the Commissioner would then contend the appeal was untimely.

Furthermore, this litigation was commenced by way of separate suits filed by fourteen different producers. Five of those producers claimed benefit of the 26 barrel provision, but nine producers did not. All of the separate suits by the various producers were merely consolidated for oral argument before the Alabama Supreme Court. Thus, the suits which are the basis of this Appeal are not the "same case" as those filed by producers claiming benefit of the 26 barrel provision. In short, fourteen different cases were consolidated for trial and for hearing on appeal, and the Alabama Supreme Court opinion in *Eagerton v. Exchange Oil & Gas Corp.* finally and adversely decided the cases of these three Appellants.

As is apparent from the procedural history of this case, after the ruling of the Alabama Supreme Court from which

this Appeal is taken, no federal constitutional questions remain to be decided, and the federal questions could, in no way, be subject to further review in state courts. In fact, the operation of the 26 barrel provision is simply a question of statutory construction and in no way provides a means for resolution of the issues now appealed to this Court, whether on federal or state grounds.

Under analogous circumstances, this court has long held that where the state court's decision on a federal constitutional question is final, independent of, and unaffected by, a state question which remains to be decided, the ruling from the highest state court is final for purposes of 28 U.S.C. §1257. *Radio Station WOW, Inc. v. Johnson*, 326 U.S. 120 (1944). *See also, Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975); *North Dakota State Board of Pharmacy v. Snyder's Drug Stores*, 414 U.S. 156 (1973). Further, where there is no possibility that remaining litigation may raise other federal questions, a review of even an intermediate adjudication does not offend objections to fragmentary review, *see Id.*, and this is especially so where the appellant would have no way of otherwise preserving the constitutional questions for appellate review. *Id.*

In *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975), this Court thoroughly discussed cases in which the judgment of the highest state court is deemed final within the meaning of 28 U.S.C. §1257, even though additional proceedings are anticipated in the lower state courts. The cases and rules examined in the *Cox* case are entirely applicable to the Appeal now before this Court, and, under authority of *Cox*, the judgment appealed from is final. Without doubt, Appellee's Motion to Dismiss the Appeal is due to be denied.

## CONCLUSION

The Alabama Supreme Court sustained Act 79-434 from attack on several federal constitutional grounds and reversed and remanded the case. On remand, the sole responsibility of the trial judge was the ministerial act of entering judgment, as mandated by the Alabama Supreme Court, as well as determining an unrelated state question as to the applicability of the 26 barrel provision to certain parties. As shown above, the 26 barrel provision is totally and completely unrelated to the constitutional challenges rejected by the Alabama Supreme Court, and those federal constitutional questions can in no way be relitigated, retired or reappealed in the state courts. There are simply no other federal questions left for state review, as a cursory reading of *Eagerton v. Exchange Oil & Gas Corp.* reveals, as corroborated (if any corroboration is necessary) by a reading of the trial court's order on remand, and as readily apparent from the excerpts of the Briefs now filed with the Alabama Supreme Court.

For the foregoing reasons, and under the authorities cited, the judgment of the Alabama Supreme Court rendered on July 10, 1981, is final for purposes of 28 U.S.C. §1257, and Appellees' Motion to Dismiss is due to be denied.

Respectfully submitted,

Rae M Crowe per m.a.s.

RAE M. CROWE

Counsel of Record:

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DeMOUY, CROWE,
HOLMES & REEVES
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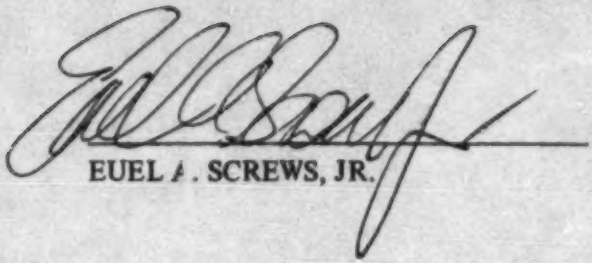
Mobile, Alabama 36601

Counsel for Appellants
Exchange Oil and Gas
Corporation, Getty Oil
Company, and Union Oil
Company of California



EUEL A. SCREWS, JR.

OF COUNSEL:

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Post Office Box 347
Montgomery, Alabama 36101

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

EXCHANGE OIL AND GAS CORPORATION, et al.,
Appellants,

V.

RALPH EAGERTON, JR., as Commissioner of Revenue of the State of Alabama, et al.,
Appellees.

On Appeal From the Supreme Court of the State fo Alabama

PROOF OF SERVICE

I,RAE M. CROWE, one of the attorneys for Exchange Oil and Gas Corporation, Getty Oil Company, and Union Oil Company of California, appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 16th day of February, 1982, I served 2 copies of the foregoing Brief in Opposition to Motion to Dismiss on all parties required to be served, as follows:

1. On appellee herein, Ralph P. Eagerton, Jr., as Commissioner of Revenue of the State of Alabama, by depositing a copy in a United States post office, with first class postage prepaid, addressed to John J. Breckenridge, his counsel of record, at 201 Administrative Building, Montgomery, Alabama 36130.

2. On all other parties to the proceeding below, by depositing copies in a United States post office, with first class postage prepaid, addressed to their respective attorneys of

record, as follows:

To Louis E. Braswell, Esq., Attorney for Exxon Corporation and The Louisiana Coal and Exploration Company,
Post Office Box 123
Mobile, Alabama 36601;

To Euel A. Screws, Jr., Esq., Attorney for Exchange Oil and Gas Corporation, Getty Oil Company, Placid Oil Company, Terra Resources, Inc., and Union Oil Company of California,
Post Office Box 347
Montgomery, Alabama 36101;

To Robert C. Black, Esq., Attorney for Citmoco Services, Inc.,
Hill Building
Montgomery, Alabama 36104;

To James R. Seale, Esq., Attorney for Anderman Operating Company, Midroc Operating Company, Pruet Production Company, and Warrior Drilling and Engineering Company, Inc.,
Post Office Box 2069
Montgomery, Alabama 36103;

To Macbeth Wagnon, Jr., Esq., Attorney for Alabama Gas Corporation and Alagasco Pipeline Company,
1500 Brown-Marx Building
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To L. Murray Alley, Esq., Attorney for Southern Natural Gas Company,

1900 First National-Southern Natural Building
Birmingham, Alabama 35203;

To Edward S. Allen, Esq., Attorney for Coronado Transmission Company,
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To Porter, Gonzalez & Rogers, Attorneys for Petroleum Corporation of Texas,
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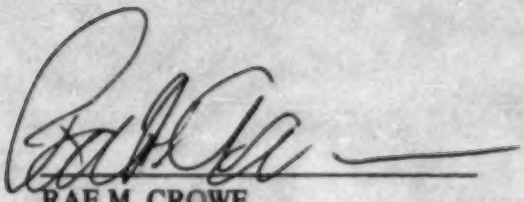

RAE M. CROWE
Attorney for Exchange
Oil and Gas Corporation,
Getty Oil Company and Union
Oil Company of California

OF COUNSEL:

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Post Office Box 290
Mobile, Alabama 36601

(205) 432-6751

## APPENDIX (i)

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

CV 79–1284–T
EXCHANGE OIL & GAS CORP. V. RALPH EAGERTON, Etc.,

CV 79–1338–H
CITMOCO SERVICES V. RALPH EAGERTON, Etc.

CV 79–1362–P
TERRA RESOURCES V. RALPH EAGERTON, Etc.

CV 79–1363–T
GETTY OIL COMPANY V. RALPH EAGERTON, Etc.

CV 79–1383–T
UNION OIL OF CALIFORNIA V. RALPH EAGERTON, Etc.

CV 79–1397–T
PETROLEUM CORPORATION OF TEXAS V. RALPH EAGERTON

CV 79–1508–T
PRUET PETROLEUM COMPANY V. RALPH EAGERTON, Etc.

CV 79–1509–G
WARRIOR DRILLING & ENGINEERING CO. V. EAGERTON

CV 79–1510–P
ANDERSON OPERATING CO. V. RALPH EAGERTON, Etc.

CV 79–1529–G
EXXON CORPORATION V. RALPH EAGERTON, Etc.

CV 79–1622–G
GULF OIL CORPORATION V. RALPH EAGERTON, Etc.

CV 80–006–T
LOUISIANA LAND & EXPLORATION CO. V. EAGERTON

**ORDER**

For good cause shown, the above cases are hereby consolidated.

THIS 23rd day of Jan., 1980.

/s/ Perry O. Hooper
CIRCUIT JUDGE

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, ALABAMA

CIVIL ACTION NO. CV–79–1284–T

EXCHANGE OIL & GAS CORPORATION,

Plaintiff,

V.

RALPH EAGERTON, Commissioner of
Revenue of the State of Alabama,

Defendant.

MOTION TO CONSOLIDATE

Comes now the plaintiff and shows unto the Court that the subject matter of this lawsuit involves, among other things, the construction of, the constitutionality of, the enforcement of, the administration of, and the enactment of Act No. 79-434, 1979 Alabama Legislature, which purported to amend Sections 40-20-2 and 40-20-8, Code of Alabama, 1975.

Plaintiff shows unto this Court that the following additional cases are pending in the Circuit Court of Montgomery County, Alabama, viz:

1. Citmoco Services v. Eagerton,
   CV 79–1338–H

2. Terra Resources v. Eagerton,
   CV 79–1362–P

3. Getty Oil Company v. Eagerton,
   CV 79–1363–T

4. Union Oil of California v. Eagerton,
CV 79–1383–T

5. Petroleum Corporation of Texas v. Eagerton,
CV 79–1397–T

6. Pruet Petroleum Company v. Eagerton,
CV 79–1508–T

7. Warrior Drilling & Engineering Co. v. Eagerton,
CV 79–1509–G

8. Anderson Operating Company v. Eagerton,
CV 79–1510–P

9. Exxon Corporation v. Eagerton,
CV 79–1529–G

10. Gulf Oil Corp. v. Eagerton,
CV 79–1622–T

11. Louisiana Land & Exploration Co. v. Eagerton,
CV 80–006–T

Each of the above cases involve, among other things, the construction of said Act 434 and involve many of the same issues presented in the instant case; the defendant is the same person in all said cases; each of the above cases have questions of fact and law that are common with each other and common with the instant cases; and consolidation under Rule 42 will facilitate good judicial administration.

The undersigned represents unto the Court that the plaintiffs' attorneys in each of the above cases have no objection to such consolidation and further represent to the Court that the defendant's attorney in each of said cases has no objection to consolidation.

/s/ Euel A. Screws, Jr.
EUEL A. SCREWS, JR.

OF COUNSEL:

HOBBS, COPELAND, FRANCO
& SCREWS, P.A.
P.O. Box 347
Montgomery, Alabama 36101

## CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing upon the following attorneys of record in the above cases:

Mr. Robert C. Black
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Cole & Black
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Mr. Rae Crowe
Armbrecht, Jackson, DeMouy,
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/s/ Euel A. Screws, Jr.
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APPENDIX (ii)

IN THE SUPREME COURT OF ALABAMA

S. C. NO. 81-168

IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA

CIVIL ACTION NOS. CV–79–1284
AND CONSOLIDATED NUMBERS

RALPH P. EAGERTON, JR., As
Commissioner of Revenue State of Alabama,
Appellant

VS.

EXCHANGE OIL AND GAS CORPORATION,
ET AL.,
Appellees.

MOTION TO DISMISS CROSS-APPEAL

Comes now Getty Oil Company, Union Oil Company of California and Exchange Oil and Gas Corporation, as Appellees/Cross-Appellants herein, and move the Court to dismiss their cross-appeal heretofore perfected.

Respectfully submitted,

/s/ Rae M. Crowe
RAE M. CROWE

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**CERTIFICATE OF SERVICE**

I do hereby certify that I have on this 4 day of February, 1982, served a copy of the foregoing pleading on counsel for all parties to this preceeding, by mailing the same by United States mail properly addressed, and first class postage prepaid.

/s/ Rae M. Crowe

APPENDIX (iii)

IN THE SUPREME COURT OF ALABAMA
S. C. NO. 81-128

IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA

CIVIL ACTION NOS.

CV–79–1284
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CV–80–167, CV–80–518, CV–80–782,
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CV–80–225, CV–80–566, CV–79–1509,
CV–80–166, CV–80–520, CV–80–783

RALPH P. EAGERTON, JR., as
Commmissioner of Revenue of the
State of Alabama,
Appellant-Cross Appellee,

v.

EXCHANGE OIL AND GAS CORPORATION;
ANDERSON OPERATING CO., A CORP.;
CITMOCO SERVICES, INC., A CORP.;
EXXON CORPORATION, A CORP.;
GETTY OIL COMPANY, A CORP.;

GULF OIL COMPANY, A CORP.;
THE LOUISIANA LAND AND EXPLORATION
COMPANY, A CORP.;
MIDROCK OPERATING COMPANY, A CORP.;
PETROLEUM CORPORATION OF TEXAS;
PLACID OIL COMPANY; PRUET PRODUCTION
CO., A CORP.; TERRA RESOURCES, INC;
UNION OIL COMPANY OF CALIFORNIA;
AND WARRIOR DRILLING AND ENGINEERING
CO., INC., A CORP.,

Appellees-Cross Appellants,

ON APPEAL TO THE SUPREME COURT OF ALABAMA
FROM THE CIRCUIT COURT OF MONTGOMERY
COUNTY, ALABAMA FIFTEENTH JUDICIAL CIRCUIT

# BRIEF OF APPELLANT – CROSS APPELLEE

ORAL ARGUMENT REQUESTED

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OF COUNSEL FOR APPELLANT

## STATEMENT OF THE ISSUES

I.

DOES ACT 79–434 *ACTS OF ALABAMA* INCREASE THE ALABAMA SEVERANCE TAX ON THE PRODUCTION OF GAS IN THE STATE OF ALABAMA?

II.

WAS IT THE INTENT OF THE ALABAMA LEGISLATURE IN ENACTING ACT 79–434 *ACTS OF ALABAMA* TO INCREASE THE ALABAMA SEVERANCE TAX ON

THE PRODUCTION OF GAS, OR WAS ACT 79-434 INTENDED TO INCREASE ONLY THE SEVERANCE TAX ON THE PRODUCTION OF OIL?

III.

SHOULD THE INTENT OF A STATUTE BE DETERMINED FROM AN ISOLATED CLAUSE OR PHRASE?

## SUMMARY OF THE ARGUMENT

Act 79-434 *Acts of Alabama* increased the Alabama severance tax on the production of gas in the State of Alabama as well as increasing the severance tax on the production of oil. The trial court erroneously construed the language in the Act providing for a "stripper well exemption" (wells producing less then 26 barrels of oil per day) and by illogical inverse reasoning determined that the entire Act did not increase the severance tax on the production of gas. This decision was patently erroneous since it is obvious that the intent of the "stripper well exemption" was to exclude from the increase in the Alabama Oil and Gas Severance Tax those marginally profitable operations which engage in the extraction of scarce oil and gas from low producing wells.

The trial court did not properly apply well-known and accepted principle of statutory construction. The trial court erroneously considered ***an isolated clause of Act 79-434 out of context*** so that a primary purpose of the entire Act was invalidated. The fundamental rule of statutory construction is to effectuate the legislative intent and this must be done by examining the entire Act instead of isolated phrases and clauses. This fundamental rule was ignored by the trial court in construing the "stripper well exemption" clause so as to control the meaning of the entire Act contrary to the well-expressed intent manifested

## ARGUMENT

These consolidated cases have previously been submitted to this Court for the purpose of determining whether Act 79-434 *Acts of Alabama* is constitutional. On July 10, 1981, this Honorable Court issued an Opinion reversing the decision of the Circuit Court of Montgomery County, Alabama, and upholding the constitutionality and validity of Act 434 in its entirety. The cases were then remanded to the Circuit Court of Montgomery County, Alabama for further disposition. On September 30, 1981, the Circuit Court of Montgomery County, Alabama issued on remand its *Final Opinion and Judgment.* In paragraph 2 of the Circuit Court's Opinion the Commissioner submits that the Circuit Court construed the provisions of the "stripper well exemption" contained in Act 79-434 so as to exempt the production of all gas wells in the State of Alabama from the 2% increase in Alabama Oil and Gas Serverance Tax levied by Act 79-434 and ordered a refund of the amounts paid under protest by the oil companies and which represented the increase in taxes on the production of the companies gas production.

The "stripper well exemption" in Act 79-434 is contained in Section 1 of the Act, and provides as follows:

> "All wells producing less than 26 barrels of oil per day shall be taxed at the rate of 4 per centum (4%) of the gross value of said oil or gas at the point of production."

APPENDIX (iv)

THE STATE OF ALABAMA

IN THE SUPREME COURT OF ALABAMA
S. C. No. 81-128

IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA

CIVIL ACTION NO. CV–79–1284
AND CONSOLIDATED NUMBERS

RALPH P. EAGERTON, JR.,
as Commissioner of Revenue of
the State of Alabama,

Appellant

VS.

TERRA RESOURCES, INC. and
PETROLEUM CORPORATION OF
TEXAS,

Appellees.

ON APPEAL TO THE SUPREME COURT OF ALABAMA
FROM THE CIRCUIT COURT OF MONTGOMERY
COUNTY, ALABAMA FIFTEENTH JUDICIAL
CIRCUIT

# BRIEF OF APPELLEES
# TERRA RESOURCES, INC.
# AND
# PETROLEUM CORPORATION OF TEXAS

Oral Argument Requested

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Attorneys of Appellees

## STATEMENT OF THE ISSUES

Whether the 26 barrel provision of Act No. 79-434 applies to all wells as decided by this Court in *Eagerton v. Exchange Oil and Gas Corp.*, 404 So.2d 1 (1981), at 8, or whether it applies only to "oil Wells" as the Commissioner contends.

## ARGUMENT

That the 26 barrel exemption applies to all wells and not just oil wells is beyond dispute for at least three reasons, viz:

> First, and foremost, this Court so held in *Eagerton v. Exchange;*
>
> Second, the plain language indicates no other possible interpretation; and

Third, the legislative history confirms unequivocally the meaning of the words.

The appellant, however, asks the Court to:

(a) Reverse its prior holding,

(b) Ignore what appellant concedes is the clear language of the exemption,

(c) Ignore the legislative history which

**APPENDIX (v)**

**IN THE SUPREME COURT OF ALABAMA**
**S.C. NO. 81-128**

**IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA**

**CIVIL ACTION NOS. CV–79–1284**
**AND CONSOLIDATED NUMBERS**

**RALPH P. EAGERTON, JR., As**
**Commissioner of Revenue**
**State of Alabama,**

**Appellant**

**VS.**

**TERRA RESOURCES, INC. and**
**PETROLEUM CORPORATION OF**
**TEXAS,**

**Appellees.**

**MOTION TO DISMISS APPEAL**

The Appellees, Terra Resources, Inc. (Terra), and Petroleum Corporation of Texas (Petco), respectfully move this Court to dismiss this appeal on the following grounds:

1. This Court's Order of July 10, 1981 in Case 79–823 *(Eagerton v. Exchange*, 404 S.2d 1) is final and binding on the Appellant, Commissioner of Revenue, and the Trial Court's Order on remand dated September 30, 1981, directly carries out the mandate of this Court without modification.

2. This appeal in substance seeks only a rehearing by the Appellant, Commissioner of Revenue, of the final order

and opinion in Case 79-823, and no rehearing was timely filed by the Commissioner from said final order and opinion.

3. This appeal raises no new issues which were not fully considered, briefed, argued and decided by this Court in Case 79-823.

4. This appeal is frivolous.

5. The decision of this Court in *Eagerton v. Exchange Oil and Gas Corp., supra,* is res adjudicata.

6. In support of this Motion to Dismiss, these Appellees attach as Exhibit "A" the opinion of this Court in *Eagerton v. Exchange,* Case 79-823, and as Exhibit "B" the final order of the Trial Court on remand.

7. These Appellees further attach a brief memorandum in support of this motion.

Respectfully submitted,

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Attorneys for Appellees

## CERTIFICATE OF SERVICE

I do hereby certify that I have on this 4th day of February, 1982, served a copy of the foregoing pleading on counsel for all parties to this proceeding, by mailing the same by United States mail properly addressed, and first class postage prepaid.

/s/ Rae M. Crowe

# Appellant's Brief

NO. 81-1268

Office - Supreme Court, U.S.
FILED
AUG 28 1982
ALEXANDER L. STEVAS,
CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1981

EXCHANGE OIL AND GAS CORPORATION, et al.,
Appellants,

versus

RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama,
Appellee.

---

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF ALABAMA

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## BRIEF OF APPELLANTS

---

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## QUESTIONS PRESENTED

1. Whether that portion of 1979 Alabama Acts, No. 434, which prohibits producers from passing on the cost of the Alabama severance tax to consumers, violates the Supremacy Clause of the United States Constitution by attempting to regulate pricing of oil and gas production, subjects which are pre-empted by federal statute (i. e., the Natural Gas Act, 15 U.S.C. §717, *et seq.*, the Natural Gas Policy Act 15 U.S.C. §3301 *et seq.*, and the Emergency Petroleum Allocation Act, 15 U.S.C. §751, *et seq.*), in light of this Court's holding in *Maryland v. Louisiana*, ——— U.S. ——, 101 S. Ct. 2114 68 L.Ed.2d 576 (1981). ———

2. Whether that portion of 1979 Alabama Acts, No. 79–434, which requires Appellants' bear 100% of the 2% tax increase imposed by the Act unconstitutionally impairs Appellants' contracts because: (1) Appellants' oil and gas leases with landowners and royalty owners require that the landowners and royalty owners bear their pro-rata share of taxes on oil and gas production; and (2) Appellants' contracts with interstate and intrastate pipeline purchasers require that all purchasers reimburse Appellants for all or part of any severance tax.

3. Whether that portion of 1979 Alabama Acts, No. 79–434, which levies a tax on all oil and gas produced or severed, including the royalty interest, but exempts royalty owners from payment of the tax (thus requiring non royalty owners to bear the entire 2% tax increase, including that portion levied on the royalty interest) violates the Equal Protection Clause of the Fourteenth Amendment.

4. Whether the Supreme Court of Alabama, in departing from its own settled rules of evidence and procedure, violated Appellants' rights to Due Process of law by:

(1) Refusing to consider the admissible and uncontradicted evidence which established beyond any doubt the true legislative intent that the 2% tax increase levied by Act No. 434 was restricted geographically to wells in only one county, as the trial court found, and not to all wells within the state, as the Supreme Court held;

(2) Rendering an arbitrary and capricious interpretation of Act 434 which is without support in the record; and,

(3) Effectively denying Appellants a hearing on the uncontested evidence relative to legislative history.

## LIST OF PARTIES TO PROCEEDINGS BELOW

Appellees Below:

Anderman Operating Company, a corporation; Citmoco Services, Inc.; Exchange Oil and Gas Corporation; Exxon Corporation; Getty Oil Company, a corporation; Gulf Oil Corporation; The Louisiana Land and Exploration Company, a corporation; Midroc Operating Company, a corporation; Petroleum Corporation; Terra Resources, Inc.; Union Oil Company of California, a corporation; and Warrior Drilling and Engineering Company, Inc., a corporation.1/

Appellant Below:

Ralph P. Eagerton, Jr., as Commissioner of Revenue of the State of Alabama.

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1/ The listing required by Rule 28.1 naming all parent companies subsidiaries except wholly owned subsidiaries) and affiliates of Appellants is contained in Appendix (vi) of Appellants' Jurisdictional Statement.

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## OPINIONS BELOW

The opinion of the Supreme Court of Alabama which is sought to be reviewed was entered on July 10, 1981. This opinion appears in the Official Reports of Alabama at 404 So.2d 1 (Ala. 1981), and is included in the Joint-Appendix at Page 2. The opinion of the trial court, the Circuit Court of Montgomery County, Alabama, does not appear in any official or unofficial report but is included in the Joint-Appendix at Page 17.

## JURISDICTIONAL BASIS OF APPEAL

Appellants obtained a declaration from the Circuit Court of Montgomery County, Alabama, that 1979 Ala. Acts, No. 79-434, violated the Equal Protection, Supremacy and Impairment of Contracts provisions of the U.S. Constitution. The Supreme Court of Alabama, on July 10, 1981, reversed. *Eagerton v. Exchange Oil and Gas*, 404 So.2d 1 (Ala. 1981). A timely Petition for Rehearing was filed, and the Petition was denied on September 4, 1981. A Notice of Appeal to the U. S. Supreme Court was filed with the Supreme Court of Alabama on November 24, 1981. On November 27, 1981, this Court granted an extension of time for Appellants to docket this appeal up to and including January 8, 1982, On May 17, 1982, this Court noted probable jurisdiction.

The jurisdiction of the U. S. Supreme Court to review this decision by appeal is conferred by Title 28, U.S.C. §1257(2).

## CONSTITUTIONAL PROVISIONS AND STATUTES

(1) "This Constitution, and the Laws of the United States which shall be made in pursuance thereof . . . shall be the supreme law of the land. . . ." U.S. Const. art. VI, cl. 2.

(2) "No state shall . . . pass any . . . law impairing the obligation of contracts . . . ." U.S. Const. art 1, §10, cl. 1.

(3) "No state shall deprive any person of . . . property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. Amend. XIV, §1.

(4) The Natural Gas Act, 15 U.S.C. §717, et seq. (see Appendix (v) to Appellants' Jurisdictional Statement).

(5) The Natural Gas Policy Act, 15 U.S.C. §3301, et seq. (see Appendix (v) to Appellants' Jurisdictional Statement).

(6) The Emergency Petroleum Allocation Act, 15 U.S.C. §751, et seq. (see Appendix (v) to Appellants' Jurisdictional Statement).

(7) 1979 Ala. Acts. No. 79–434 (see Appendix (v) to Appellants' Jurisdictional Statement).

(8) Code of Ala. §§40–20–1(8), -3 (1975) (see Appendix (v) to Appellants' Jurisdictional Statement).

## VII.

## STATEMENT OF THE CASE

### A.

### *Nature of the Case*

This case is an appeal from an opinion and order of the Supreme Court of Alabama in which the Alabama Court arbitrarily refused to examine the legislative history of an ambiguous taxing statute and, as a result, caused the imposition of millions of dollars annually in increased oil and gas severance taxes on these Appellants. The result reached was contrary to the wording of the statute and exactly opposite to the known, admitted and undisputed intent of the Alabama Legislature. Not only did the Alabama Supreme Court usurp the role of the legislature as the taxing body, but also the court refused to invalidate a taxing statute which clearly violated the Federal Constitution in several respects.

In mid-1979, the Alabama Legislature passed Act 434, which was designed by its sole legislative sponsor to raise severance taxes from 4 to 6% on oil and gas production only in the sponsor's home county, the County of Escambia, Alabama. Appellee, who as Commissioner of Revenue for the State of Alabama is responsible for the collection of the Alabama severance taxes, nevertheless construed Act 434 to increase the severance tax state-wide. These Appellants, owners and producers of oil and gas in areas of Alabama outside Escambia County 1/, paid, under protest,

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1/ None of these Appellants, Union Oil Company of California, Getty Oil Company or Exchange Oil and Gas Corporation, produces oil or gas in Escambia County, Alabama. On the other hand, Appellants in consolidated Case No. 81–1020, Exxon Corporation, Gulf Oil

the 2% severance tax increase wrongfully assessed by Appelle and, thereafter, filed suit in the Circuit Court of Montgomery County (trial court of general jurisdiction) seeking declaratory relief and a refund of the amounts paid under protest.

The trial court held that the Act applied only to Escambia County production, invalidated the Act on several grounds, including Federal Constitutional violations, and ordered monies refunded to Appellants. On appeal to the Alabama Supreme Court, the trial court was reversed, and the taxing statute was upheld against, among other things, various Federal Constitutional challenges. Appellants appeal from the Alabama Supreme Court's Opinion and Order.

B.

*Legislative History of 1979 Ala. Acts, No. 434*

Effective September 1, 1979, Act No. 434 of the Alabama Legislature amended the Severance Tax Article of the Alabama Code and made the following changes, among others, in the applicable severance taxes:

(a) It increased the tax rate of 4%, based on the value of production, by 2%, for a total of 6%;

(b) It provided that the additional 2% tax increase should be "absorbed and paid" by "producers" and prohibited such "producers" from passing "on the cost of such tax payments, either directly or indirectly to the consumer" (hereinafter

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1/ Continued
Corporation, and the Louisiana Land and Exploration Company, *do* produce oil and gas in Escambia County. Therefore, the Constitutionality of the Alabama Supreme Court's action with regard to construction of Act 434 is an issue peculiar to these Appellants and not to Appellants in consolidated Case No. 81—1020.

sometimes referred to as the "Pass-Through Prohibition");

(c) It imposed the increased tax on oil or gas production, which included that portion of production known as the royalty interest, but it exempted royalty owners from the 2% tax increase (hereinafter sometimes referred to as the "Royalty Exemption");

(d) It limited the application of the 2% increase by a proviso inserted at the foot of the levying portion of the Act as follows: "said additional increase shall be limited to those oil and gas wells from between 15,000 and 15,800 feet in the smackover formation" (hereinafter sometimes referred to as the "Smackover Proviso") 2/

1979 Ala. Acts, No. 434, p. 687 §1. (J.A. 72).

1. *Initial versions of Act 434.*

Act 434 had its genesis long before the 1979 legislative session. (J. A. 125–26). The sole legislative sponsor of Act 434 was Representative Brooks Hines of Escambia County. (J. A. 151, 154). Escambia County is a large producer of the State's oil and gas, and in 1978 the county accounted for 29% of the State's crude oil production, 47% of the State's condensate production and 63% of the State's gas production. (J.A. 243–44). Since the State's severance tax scheme provided for a division of revenues between the State, the producing county and the municipalities within the producing county (*see* 1971 Ala. Acts, No. 2057, p. 3317, §1), Representative Hines perceived an increase in severance taxes as the solution to a short-fall in the revenues of Escambia

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2/ It is undisputed that oil or gas production from 15,000 to 15,800 feet in the Smackover Formation occurs only in Escambia County, Alabama. *Eagerton v. Exchange Oil & Gas Corp.*, 404 So.2d 1, 3 (Ala. 1981) (J. A. 5).

County and the municipalities located therein. (J.A. 131). Consequently, in 1976, 1977 and 1978, he introduced general bills of statewide application which proposed to increase statewide severance taxes from 4% to 6%, but in each instance the bills failed to pass. (J.A. 125–26). Nevertheless, in the 1979 legislative session, Representative Hines presented Act 434 (introduced as House Bill (H. B.) 148), again a general statewide bill which purported to amend the existing severance tax statutes by levying an additional 2% increase on statewide production. (J. A. 126–28, 151–52, 154).

2. *A change in direction - the amended version of Act 434.*

After introduction of the bill, it was referred by the Speaker to the House Ways and Means Committee. (J. A. 128, 151–52). As with the previous bills which attempted to increase severance taxes statewide, Mr. Hines encountered stiff resistance in the Ways and Means Committee and from representatives and constituants of other oil producing counties. (J. A. 133–35, 153, 154). Undaunted, Mr. Hines redoubtably contacted the Governor's Office for support of a statewide increase in severance taxes, but he was advised that "they did not have the time to push it in that legislative year". (J. A. 138–39).

Realizing the strength of resistance to his proposed bill, and the probability of repeating the 1976, 1977 and 1978 failures, Representative Hines began to seek a political compromise which would be acceptable to the opposition, and he contacted the State Oil and Gas Board to obtain oil and gas production figures for Escambia County. (J.A. 139). The State Oil and Gas Board then supplied Representative Hines with depth and production figures for each producing county in the State. (J. A. 140–41, 242–44). Using information supplied by the State Oil and Gas Board, Represen-

tative Hines determined that the 2% tax increase proposed by his bill could be limited to his own county by a proviso taxing only oil and gas taken from the depth range of 15,000 to 15,800 feet in the Smackover Formation, since only Escambia County produced oil and gas from this formation and depth interval. (J.A. 140–43).

Representative Hines contacted the Alabama Legislative Reference Service requesting a draft amendment or substitute limiting the additional tax levied by H. B. 148 to Escambia County production only. (J.A. 117, 136-37). The Reference Service's inter-office memo regarding Hines' request stated:

> 5-3-79
> Rep. Brooks Hines
> Enclosed is a substitute to H 148
> He wants two substitutes to the Substitute to 148
> 1. Make the increase of 2% phase out in 1983.
> 2. Limit the increase to those oil and gas wells from between 15,000 and 15,800 (?) in the smackover formation.
>
> Then also prepare him amendments (2) amending the Substitute to H 148 doing the same thing. (J.A. 245).

Additionally, Representative Hines contacted the Alabama Fiscal Office for projection of revenues to be produced by H. B. 148, as limited to Escambia County production. (J. A. 135-36). Finally, Representative Hines twice requested the Chairman of the Ways and Means Committee to postpone a public hearing on the bill in order that it be changed to apply the 2% increase only to production in Escambia County. (J.A. 152).

### 3. *The hearing before the House Ways and Means Committee and the representations of the sole sponsor of Act 434.*

After the two postponements at Representative Hines' request, the hearing before the House Ways and Means Committee was scheduled for June 6, 1979. (J.A. 152). Just prior to the hearing, Mr. Hines approached several witnesses scheduled to testify before the Ways and Means Committee. (J.A. 156-57, 159, 162). The scene was hectic, Mr. Hines was "rushing around to get the amended bill typed up, and he gave it to a secretary who typed it up in a nearby room". (J. A. 157). (See also J. A. 159-60). Mr. Hines showed the amended bill to six witnesses scheduled to testify before the Committee and stated to them that the bill was amended so as to restrict its operation to wells producing in Escambia County. (J. A. 157, 159, 162). Shortly afterwards, the bill had been retyped, and Representative Hines appeared before the Committee. (J. A. 157).

It is undisputed that the following occurred at the Committee hearing:

(1) In presenting the bill, Representative Hines unequivocally represented to the full Committee that the amended, or substitute bill, in the form ultimately passed as Act 434, contained a depth proviso limiting application of the bill to wells producing oil and gas between 15,000 and 15,800 feet beneath the surface of the earth, and that, as such, the bill applied only to Escambia County. (J.A. 152, 154, 157, 159, 162).

(2) Mr. Hines asked for, and was granted, "local courtesy" which means that "the members will automatically vote favorably on the measure", since it does not affect their counties. (J. A. 152, 155).

Based solely on the representations of Representative Hines, the full Committee voted to report the bill out to be taken up by the House of Representatives. (J.A. 152-53, 155).

In connection with the drafting and presentation of the bill, Mr. Hines testified as follows:

> "In my drawing up the bill, I thought that the increase in the tax would be limited to the production in the smackover formation between 15,000 and 15,800 feet, and that's what I told the Committee to the best of my recollection . . . and I specified to the Committee that, at present, production at that depth only applied to Escambia County, Alabama according to the information given me by the State Oil and Gas Board. The question was asked of me, you know, could it occur at some future date, as I recall, and I said yes, theoretically it could refer to another county, but right now it only refers to my County." (J.A. 130).
>
> "[I]t seemed to me that [the Legislative Reference Service] accomplished what I intended them to do in the bill that they gave me back.
>
> Q: It was clear to you, then, that it only applied to increased production in the interval between 15,000 and 15,800?
>
> A: That's the way I read it.
>
> Q: And that's what you intended?
>
> A: That's what I intended." (J.A. 137).

4. *Activity in the House and Senate.*

After the bill was reported out of the Ways and Means Committee to the House of Representatives, it was, of course, treated as a local bill and was taken up out of order on the Special Order Calendar. (J.A. 152). The sole sponsor, Representative Hines, admits, and many others confirm, that in the House, he again represented and presented the bill as one of local application. (J.A. 130, 152, 155). John Pemberton, Clerk of the House of Representatives, also recalls that Mr. Hines had the microphone on the floor of the House, was "handling" his own bill, and advised the House that objections to the initial bill had been removed by amendment in Ways and Means, making the substitute bill apply only to Escambia County. (J.A. 90). The same representations as to the bill's local application were also made when the bill was presented to the Senate. (J.A. 130).

5. *The House Journal.*

The House Journal contains pertinent entries which document the testimony of Representative Hines, the Clerk, John Pemberton, and others, and it unequivocally shows that the bill was passed as an uncontested local bill. (Pl. Ex. 33; Adm. J.A. 79-81, 92). The House Journal reveals that the original HB-148 was a pre-filed bill which was referred to the Ways and Means Committee on April 17, 1979 (Pl. Ex. 33, pp. 3-4; Adm. R. 1229); HB-148 "with substitute" was favorably reported to the House from the Ways and Means Committee on June 6, 1979 (Pl. Ex. 33, pp. 11-13; Adm. R. 1229); HB-148 was placed on the House "special order" calendar along with "uncontested local bills" on July 10, 1979 (Pl. Ex. 33, pp. 34-35; Adm. R. 1229); on July 12, 1979, HB-148 "with substitute" was taken up as a bill on the special order calendar (Pl. Ex. 33, p. 39); the substitute was adopted with "67 yeas and 1 nay" (Pl. Ex. 33, p. 45; Adm. R. 1229); on July 19, 1979,

the House concurred in and adopted the Senate amendment which added §3, the severability clause, with a 56 to 0 vote (Pl. Ex. 33, pp. 58-59); and, the bill was duly enrolled (Pl. Ex. 33, p. 59), and delivered to the Governor on July 19, 1979 (Pl. Ex. 33, p. 60; Adm. R. 1229).

The bill thus passed became effective as of September 1, 1979. (J.A. 72-5).

6. ***The Fiscal Notes and the interpretation of Act 434 by the Legislative Fiscal Office.***

The Alabama Fiscal Office is an arm of the legislature charged generally with the duty to furnish the House Ways and Means Committee and the Senate Finance and Taxation Committee with financial information and, specifically, to prepare fiscal notes estimating future revenues to be derived from revenue producing bills. *See* Code of Alabama, §29-5-7 (1975). *See also*, (J.A. 27, 98). In the performance of its duties to the legislature, the Fiscal Office has access to the floor of both Houses (J.A. 27, 98), and a representative of the Fiscal Office regularly attends the meetings of both the Ways and Means Committee and the Finance and Taxation Committee. (J.A. 107).

Under the existing legislative practice and procedure, fiscal notes are physically attached to revenue producing bills, and the notes are signed by the Committee Chairman of Ways and Means or Finance and Taxation. (J.A. 27, 99). When HB 148 was first introduced as a state-wide bill, Mr. Victor Vernon, a fiscal analyst with the Legislative Fiscal Office, prepared the first fiscal note dated June 7, 1979, signed by Mr. Owens, Chairman of Ways and Means, which estimated revenues of 5.4 million based on state-wide oil and gas production. (J.A. 100-01, 164). *After* Mr. Hines prepared his substitute or amended bill, Mr. Vernon, acting on instructions from Mr. McDowell, Director

of the Alabama Legislative Fiscal Office, and after conferring with Mr. Hines and Mr. Lewis Easterly, Secretary of the Department of Revenue, prepared a second fiscal note dated July 17, 1979, reducing estimated revenues to 1.7 million based on oil and gas produced from Escambia County alone. 3/ (J.A. 100, 165). The fiscal note estimating reduced revenues, signed by the Chairman of Finance and Taxation, was physically attached to Act. No. 434, as considered by the

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3/ Mr. Vernon explained the change in projected revenues to his supervisor, Mr. McDowell, in a written memorandum as follows:

MEMORANDUM

TO: Rex
FROM: Victor
RE: Fiscal Notes to H. B. 148

The fiscal note to House Bill as introduced carried an estimate of $5.4 million in additional tax revenue, as the bill affected all in-state wells producing more than (26) barrels of oil per day.

This estimate remained in the fiscal note of House Bill 148 from June 6, 1979 until July 17, 1979, after being reported out of the Senate Finance and Taxation Committee. The estimate was changed to reflect an interpretation of House Bill 148 as substituted affecting only Escambia County's production of oil and gas.

*The note was then changed upon contacting officers of the Department of Revenue who had accepted the Escambia County Interpretation as the intent of the bill.*
VV/pb

(J.A. 241) (emphasis added).

Mr. Vernon's memorandum is important for two reasons. First, it reflects the reasoning behind the Legislative Fiscal Office's interpretation of the amended version of HB 148 (Act 434); second, it shows, that the Department of Revenue concurred in the local interpretation of the Bill.

Senate, as finally signed by the governor, (J.A. 178), and as perpetuated in the legislative package filed with the Alabama Department of Archives and History. (J.A. 226-240).

7. *Act 434 as passed and signed into law.*

Act 434, as ultimately passed by the House and Senate and signed by the Governor, contained three significant changes not included in its predecessor statute. First and foremost, the limiting "Smackover Proviso" was inserted at the end of subparagraph (a) of the bill, which is the taxing or levying section:

> Provided, however, that said additional increase shall be limited to those oil and gas wells from between 15,000 and 15,800 feet in the smackover formation. (J.A. 233).

Secondly, a provision exempting royalty owners from payment of the increase in tax was inserted at the foot of subparagraph (b) with the following language:

> Any person who is a royalty owner shall be exempt from the payment of any increase in taxes herein levied and shall not be liable therefor. (J.A. 234).

A separate consumer pass-through prohibition was inserted as a separate subparagraph (e) as follows:

> The privilege tax herein levied shall be absorbed and paid by those persons engaged in the business of producing or severing oil and gas only, and the producer shall not pass on the cost of such tax payments, either directly or indirectly, to the consumer; it being the express intent of this Act that the tax herein levied shall be borne exclusively by the producer or severer of oil or gas. (J.A. 234).

Again, all provisions were inserted solely at the instance of Representative Brooks Hines from Escambia County, the sole creator and sponsor of the legislation. (J. A. 132-33).

C.

*Application of Act 434 by the Alabama Department of Revenue*

On August 16, 1979, and September 12, 1979, the Alabama Department of Revenue sought and received two in house legal opinions (from counsel for Appellee in this Court) that Act 434 should be construed as a general statewide taxing statute. (Pl. Ex. 18 and 19; Adm. R. 1366). Accordingly, the Department of Revenue, in September, 1979, issued notices of a statewide increase in the severance tax to all producers (Pl. Ex. 17; Adm. R. 1364) - - this action was protested by Representative Hines. Afterwards, in response to the Department's u-turn and new position that the bill was a statewide taxing measure, Appellants herein paid the 4% portion of the tax imposed by Act 434 without protest, but paid the 2% increase under protest and filed the suits which are now before this Court for review. (R. 1 et seq.).

## SUMMARY OF ARGUMENT

1. By refusing to consider, or even rule upon, Appellants' uncontested and conclusive evidence of the legislative intent implicit in Act 434, the Supreme Court of Alabama rode roughshod over Appellants' constitutionally guaranteed right to due process. As a result, the Supreme Court of Alabama extended operation of the increase in tax imposed by the act to statewide producers of oil and gas, including Appellants, when the Legislature clearly and irrefutably intended to increase the tax on oil or gas production in only one county. The perverted construction of Act 434 could only be achieved by radical departure from the court's own, indeed universally, established rules of evidence and construction. The action taken by the Alabama Supreme Court was irrational, arbitrary, capricious, utterly without support in the record, and denied Appellants

an opportunity to defend their substantive rights and have a decision based upon the evidence.

2. The provision of Act 434 which prohibits Appellants from passing on to consumers the cost of the additional severance tax imposed by the act is pre-empted by the Natural Gas Act, the Natural Gas Policy Act, and the Emergency Petroleum Allocation Act. This Court, in *Maryland v. Louisiana*, has specifically held that the Natural Gas Act pre-empted similar consumer provisions in a Louisiana as the extensive regulatory authority vested in the Federal Energy Regulatory Commission could not be usurped by state enactment. Here, not only does Act 434 trespass on the authority of the Federal Energy Regulatory Commission, but also Act 434 unconstitutionally conflicts with specific provisions of the Natural Gas Policy Act. Finally, District Courts and Courts of Appeals have held, in *Mobil Oil Corp. v. Tulley* and *Mobil Oil Corp. v. Dubno*, that similar "pass-through prohibitions" were pre-empted by provisions of the Emergency Petroleum Allocation Act.

3. The provision of Act 434 which prohibits Appellants from passing on the cost of the additional severance tax imposed by the act, and the provision which exempts royalty owners from payment of the increase in tax imposed by the act, unconstitutionally impair Appellants' contracts with intrastate and interstate pipeline purchasers and Appellants' contracts with royalty owners. Appellants' contract provisions explicitly provide for allocation of increases in severance taxes among the parties to the contract, and the contracts pre-date the effective date of Act 434. Act 434 substantially abrogates the Appellants' contractual agreements, without legitimate public purpose and in an unreasonable and unnecessary manner.

4. Lastly, Act 434 establishes taxing classifications which are not rationally related to any conceivable purpose.

Act 434 discriminates among that class of all owners of production, by taxing the working interest owners, but exempting the royalty owners from payment of the tax, although each is simply a co-owner of the well's production -- one molecule of oil or gas is identical to another. Additionally, because the act purports to impose the exempted royalty owner's share of the tax on the remaining owners of production, the remaining owners of production are taxed in inverse proportion to their actual ownership interest. Assuming for argument that royalty owners are in a class apart from the remaining owners of production, the working interest owners, the taxing statute discriminates among those working interest owners by means of a regressive tax - - the smaller the working interest share, the greater the proportionate amount of tax. Certainly no conceivable purpose is rationally served by the taxing classifications imposed by Act 434.

## IX.

## ARGUMENT

### A.

### The Alabama Supreme Court, by Departing From Settled Rules of Law and Procedure, Denied Appellants Due Process of Law

1. ***The Due Process Guarantee of the Fourteenth Amendment applies to judicial decision-making.***

It is clear that the action of a state court may violate the Due Process Clause of the Fourteenth Amendment. *Hughes v. Washington*, 389 U.S. 290, 298 (1967) (Stewart, J., concurring); *American Railway Express Co. v. Kentucky*, 273 U.S. 269 (1927). As Justice Brandeis wrote in *Brinkerhoff-Faris Trust & Savings Co. v. Hill*, 281 U.S. 673 (1930),

"the federal guaranty of due process extends to state action through its judicial, as well as through its legislative, executive, or administrative branch of government." *Id.* at 680 (footnote omitted). Here, as in *Brinkerhoff*, "it is for the state courts to determine the . . . law of the state, [but] they must, in so doing, accord the parties due process of law." *Id.* at 682. In the course of reaching its decision, the Alabama Supreme Court acted in such fashion as to deny Appellants due process, by refusing to consider the legislative history of the statute being construed.

The role of a court in construction of a statute, simply, is to find and give effect to the true legislative intent. In this case, every party in any manner involved with Act 434, including the Appellee Department of Revenue, knows, with certainty, the true, absolute and uncontradicted intent of the Alabama Legislature in enacting Act 434. The true legislative intent was to increase the Alabama Severance Tax by 2% on certain wells located in Escambia County (Smackover Wells between 15,000 and 15,800 feet). *There is not a word of testimony or a single document to the contrary.*

The true intent is undisputed. See the testimonies of the following witnesses: the bill's sponsor, Representative Brooks Hines (J.A. 124-49); the Chairman of the House Ways and Means Committee, Representative Walter Owens (J.A. 151-53); a Member of the House Ways and Means Committee, Representative Thomas Sandusky (J.A. 153-56); Clerk of the House of Representatives, Honorable John Pemberton (J.A. 79-92); Director of the Alabama Legislative Fiscal Office, Mr. Rex McDowell (J.A. 96-115); a Fiscal Analyst for the Alabama Legislative Fiscal Office, Mr. Victor Vernon (J.A. 163-81); a witness at the House Ways and Means Committee hearing which considered Act 434, Mr. Dick Mason (J.A. 158-61); a witness at the House Ways and Means Committee hearing which considered Act 434, Mr.

Robert Jackson (J.A. 156-58); a witness at the House Ways and Means Committee hearing which considered Act 434, Mr. James Sledge (J.A. 161-53); and Secretary of the Department of Revenue and Acting Chief of Research, who also acted as the Fiscal Analyst for Act 434, Mr. Louis Easterly (J.A. 196-225). And, see the following documentary evidence: the original bill (J.A. 226-30); the substitute bill, with the depth proviso and other critical changes (J.A. 232-36); the memo of the Legislative Reference Service showing the sponsor's request that the initial bill be amended so as to apply only to Smackover Wells between 15,000 and 15,800 feet (J.A. 245); the state-wide fiscal note promulgated in connection with the initial version of Act 434 (J.A. 231); the Escambia County fiscal note promulgated in connection with the amended and final version of Act 434 (J.A. 237); the Legislative Fiscal Office memo from Fiscal Analyst Vernon to Director McDowell showing the Department of Revenue's adoption of the "Escambia County Interpretation" (J.A. 241); the House Journal showing the passage of Act 434 as an "uncontested local bill" (Pl. Ex. 33; Adm. R. 1229); and, the Affidavits of Representative Walter Owens and Thomas Sandusky showing that the bill received "local courtesy" in the Ways and Means Committee (J.A. 152, 155). We repeat: The *true* legislative intent is undisputed. The Appellee did not dispute, in the trial court, the testimony of these ten witnesses, or the contents of these eight sets of documents. Rather, the Appellee simply sought to have the Alabama Supreme Court decide, in spite of the true, obvious and uncontroverted legislative intent, that the Act should nevertheless be held to apply state-wide, and the Alabama Supreme Court obliged.

The Alabama Supreme Court put on "blinders", refused to consider the evidence of legislative intent, strained the wording of the Statute to the point of breaking, and reached a result which was opposite to the true intent - a result which imposed a tax of millions of dollars on these Appel-

lants, contrary to the taxing intent of the Legislature. (*See* the Final Judgments and Decrees entered by the trial court, before appeal was taken to the Alabama Supreme Court, setting out amounts to be refunded to the various Plaintiffs, R. 1163-1176, 1179, 1183-85, 1188-89.) There is not a reported decision in American jurisprudence known to these Appellants which holds, or even intimates, that a court should wear blinders and plow down the row, looking neither left nor right, to speculate on the meaning of some ill-drafted phrases and reach what *everyone* knows is the exact opposite of what the Legislature intended.

The Alabama Supreme Court's action is contrary to established principles of law and equity, contrary to the conceded facts of this case, and in violation of due process rights of these Appellants. As a result, the coffers of the State's treasury have been filled by a tax imposed upon these Appellants/producers where the legislature did not so intend to tax. The Alabama Supreme Court thereby violated the basic constitutional concept of separation of powers, encroached upon the legislative province, and relegated itself to the legislative role of a taxing authority.

Appellants appeal for relief from the arbitrary and irrational *manner* in which the Alabama Supreme Court reached its decision. As noted in *Kinsella v. United States*, 361 U.S. 234 (1960), due process "has to do . . . with the denial of 'fundamental fairness, shocking to the universal sense of justice' . . . it deals neither with power nor with jurisdiction, but with their *exercise*." *Id.* at 246 (quoting *Betts v. Brady*, 316 U.S. 455, 462 (1942) ) (emphasis supplied). In the present case, the state court undeniably had the power and jurisdiction to construe a state taxing law -- it is the *manner* in which that power was exercised which violated fundamental fairness.

2. ***The refusal to examine the legislative history was arbitrary or capricious.***

On aspect of due process was expressed in *Slochower v. Board of Higher Educatio.i*, 350 U.S. 551 (1956). There, as here, the Appellant was denied "[t]he 'protection of the individual from arbitrary action' which Mr. Justice Cardozo characterized as the very essence of due process." *Id.* at 559 (quoting *Ohio Bell Tel. Co. v. Public Utilities Com.*, 301 U.S. 292, 302 (1937) ). The action complained of here is the Alabama Supreme Court's unexplicable refusal to examine the legislative history of, and facts concerning the passage of, Act 434, despite the Appellants' repeated insistence that the court had a duty to do so. *See, e. g.*, Application for Rehearing and supporting brief, pp. 21-22.

The impropriety of such a refusal to examine legislative history was made clear in *United States v. Dickerson*, 310 U.S. 554 (1940). In that case the same rationale used by the Alabama Supreme Court was asserted - that the words of the statute in question were "plain and unambiguous and that other aids to construction may not be utilized." *Id.* at 561. This Court responded, "the very legislative materials which respondent would exclude refute his assumption. It would be anomalous to close our minds to persuasive evidence of intention on the ground that reasonable men could not differ as to the meaning of the words." *Id.* at 562. *Cf. Boston Sand & Gravel Co. v. United States*, 278 U.S. 41, 48 (1928) (wherein the Court commented that "it would be *arbitrary* to refuse to consider [Congress' customary use of a particular phrase, a fact not apparent on the face of the statute,] when we come to interpret a statute." ) In the instant case, the Alabama Supreme Court undertook just this sort of anomalous, close-minded action, by refusing to consider the legislative history which completely refuted any assumption that the bill was intended to be a statewide taxing measure.

(a) The Court has a duty to determine legislative intent.

The Alabama Supreme Court implicitly recognized that "[i]t is the duty of the court to discover the intention of the legislature, and to respect that intention." *Pennington v. Coxe*, 2 Cranch 33, 59 (1804), since it couched its interpretation of the statute in terms of the "manifested intent of the legislature." *Eagerton v. Exchange Oil & Gas Corp.*, 404 So.2d 1, 4 (Ala. 1981). Indeed, the Alabama Supreme Court has *explicitly recognized its duty* to examine the legislative history in connection with statutory construction. *See, e. g., Morris v. State*, 271 Ala. 290, 292, 122 So.2d 914, 915 (1960) ("in construing statutes, it is our *duty* to examine the legislative history in order to ascertain the true intent of the law-making body."); *Abramson v. Hard*, 229 Ala. 2, 6, 155 So. 590, 593 (1934) ("in interpretation and construction of statutes the *primary rule* is to ascertain and give effect to the intention of the legislature."); *Southern Express Co. v. I. Brickman & Co.*, 187 Ala. 637, ____, 65 So. 954, 955 (1914) ("to arrive at the real meaning of a statute the courts *should consider* the prior law, the mischief or defect for which it had not provided, the remedy appointed by the legislature, the reason for such remedy, and the external historical facts which led to its enactment, and the statute will be so construed as to affect the purpose for which it was intended").

It is beyond peradventure that "[t]he intent of the lawmaker is the law." *Jones v. Guaranty & Indemnity Co.*, 101 U.S. (11 Otto.) 622, ____ (1880). *See also, Abramson v. Hard*, 229 Ala. 2, 6, 155 So. 590, 593 (1934) ("[t]he intention of the lawmaker constitutes the law."), and the court surely realized that "the intention of the legislature, when discovered, must prevail." *Brown v. Barry*, 3 U.S. (3 Dall.) 365, 367 (1797). Incredibly, however, the effect of its action was to negate the intent of the legislature, by its refusal to discover that intent. The court's action is

especially egregious in light of the trial court's extensive findings as to legislative history, and its finding that legislative intent evidenced by the legislative history was incontrovertible (see J.A. 25-27) - - the legislators' intent had already been discovered.

Presumably, then, the court was cognizant of the clearly established principle that the legislators' intent controls any interpretation of a law, but the court determined that its interpretation of the statute, based on the face of the statute only, was so conclusive as to preclude examination of the legislative history, noting "we do not need to resort to extraneous matters to determine the legislative intent." 4/ 404 So.2d at 4. That assertion is plainly at odds with the rules of statutory interpretation recognized by the court itself. The Alabama Supreme Court not only had a need to examine the legislative history, it was under a *duty* to consider those materials. *See, United States v. Anderson,* 76 U.S. (9Wall.) 56, 65 (1870) (wherein this Court pronounced that "it is the duty of a court in construing a law to consider the circumstances under which it was passed. . . .").

Specifically, the Alabama Court refused to take notice of statements made on the floor of the House and Senate, statements made before committees, statements made by the sole sponsor of the bill, explanations by the sponsor, journal entries, fiscal notes and other materials promulgated in connection with passage of the bill, even though the Court

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4/ The rationale used by the Alabama Supreme Court was that, if the statute is not ambiguous, a court can glean the intent from the statute itself and need not look further. See *Eagerton v. Exchange Oil and Gas Corp.*, 404 So.2d 1, 3-4, (Ala. 1981). However, the court's opinion itself refutes its conclusion that the statute was unambiguous, because the court had to struggle for paragraphs to interpret what it wanted the statute to say. See *Id.*

had, in scores of cases and in an unbroken line of authority, considered just such evidence to glean the legislative intent. 5/ Of course, the extrinsic evidence here was uncontroverted and led to the inescapable conclusion that the legislature intended Act 434 to apply only to Escambia County. Thus, by ignoring its duty to examine and effect the legislative intent, the Alabama Court reached a result opposite to that intended and utterly without support in the record.

The rationale which compels examination of the legislative history was set out in *Alaska v. American Can Co.*, 358 U.S. 224 (1959). There, this Court confronted a situa-

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5/ See, e. g., *Alabama State Board of Health v. Chambers County*, 335 So.2d 653 (1976) (the Court will look less at the "letter or words of the statute than at the reason and spirit of the law" which is the "pole star" of statutory construction); *State Docks Commission v. State Ex Rel Jones*, 227 Ala. 521, 150 So. 537 (1933) (where the Court looked to various aids outside the statute, viz: Journals, reports of the Finance and Taxation Committee); *Morgan v. School Commissioners of Mobile County*, 248 Ala. 22, 26 So.2d 108 (1946) (where the Court looked to statements made during discussion on the floor); *Ex Parte Southern Bell Tel. & Tel. Co.*, 267 Ala. 139, 143, 99 So.2d 118, 121 (1957) (where the court looked to statements during debate on the floor); *City of Montgomery v. Graham*, 255 Ala. 685, 53 So.2d 363 (1951), and *L&N R.R. Co. v. State*, 201 Ala. 317, 78 So. 93 (1917) (floor debate admitted and considered as conclusive); *Board of Revenue of Jefferson County v. Kayser*, 205 Ala. 289, 88 So. 19 (1921) (opinions of Members expressed on the floor considered as admissible and highly persuasive); *Glenco Paving Co. v. Groves*, 266 Ala. 154, 94 So.2d 872 (1957) (affidavits of employees of State Highway Department and State Finance Department relied upon in construing the statute); *Morris v. State*, 271 Ala. 290, 122 So.2d 914 (1960) (Court considered as admissible and meaningful Minute of the Code Committee); *Houston County v. Martin*, 232 Ala. 511, 169 So. 13 (1936) (entries in the Journals of the House and Senate; *County Board of Education v. State*, 239 Ala. 276, 194 So. 881 (1940) and *State v. Bryan*, 285 Ala. 247, 231 So.2d 118 (1970) (Court looked generally to all of legislative history in construing taxing statutes).

tion similar to the one at hand; the effect of an Alaskan tax measure was to be determined. This Court refused to adopt a construction which would "[read] into the Act by implication what the Legislature seemingly rejected." *Id.* at 227. *Cf. Morris v. State*, 271 Ala. 290, 122 So.2d 914 (1960) (wherein the Alabama Supreme Court refused to adopt a construction of a statute amounting to an amendment the legislature had three times refused). In the instant case, the Alabama legislature had rejected, on three different occasions, predecessors of Act 434 which were presented as statewide measures. The Alabama Supreme Court's construction of the act as a statewide bill is clearly contrary to the teaching of *American Can*; it was crucial that the court consider the legislative history, which made it clear that the legislature rejected the very construction which the Alabama Supreme Court adopted.

(b) Examination of legislative history is required for even a "clear and unambiguous" statute.

The Alabama Supreme Court rejected all extrinsic evidence of legislative intent, finding that the "manifested intent of the legislature, as stated in the Act itself . . . [was] clear and unambiguous . . . [and] that the legislature intended for the tax increase to apply statewide." 404 So.2d at 4. However, the Court's holding runs counter to its well established and unequivocal rule, as stated in *Abramson v. Hard*, 229 Ala. 2, 155 So. 590 (1934):

> [N]or are we confined in arriving at the true meaning of the words used . . . . The intention of the lawmaker constitutes the law. The thing may be within the letter of the statute and not within the meaning or within the meaning or not within its letter. . . . . *It will not do to be governed uniformly by literal expressions of a statute;*

> *for by so doing, we should many times wander entirely from the obvious intent of the legislature. The court is often not controlled by the literal language of the statute, but by its meaning when properly interpreted, though outside of such literal meaning.*

*Id.* 229 Ala. at 6, 155 So. at 593 (citations omitted, emphasis added). *See also, Tidewater Oil Co. v. United States,* 409 U.S. 151 (1972); *Flora v. United States,* 362 U.S. 145 (1960); *Harrison v. Northern Trust Co.,* 317 U.S. 476 (1943); *American Bakeries v. City of Opelika,* 229 Ala. 388, 157 So. 206 (1934).

The Alabama Court's duty to hew the intention of the legislature as "the pole star of interpretation of statutes," *United States v. Stone & Downer Co.,* 274 U.S. 225, 252 (1927), cannot be avoided by a claim that the statute is clear on its face.

Thus, the court must look to the legislative history, because otherwise the literal words may bring about an end completely at variance with the purpose of the statute. *Abramson v. Hard,* 229 Ala. 2, 6, 155 So. 590, 593 (1934). Here, the trial court correctly found:

> The fact that the portions of the statute . . . which are in contention were offered by amendment within the Committee on Ways and Means of the House of Representatives, the fact that its sponsor on the floor of the House and in committee repeatedly explained and represented the bill as affecting only the production in the stated interval and geological formation, the fact that the Alabama Fiscal Office in performance of its

> statutory duty projected . . . estimated revenues on a local basis (i. e., Escambia County production of oil and gas) and attached that Fiscal Note to the Bill itself as required by the rules of the House and Senate, and the other facts . . . are all relevant legislative history to establish with overwhelming clarity the intention of the legislature and the intent of the bill itself. It is a bill which purports only to tax production in . . . Escambia County.

*Exchange Oil & Gas Co. v. Eagerton*, [MS. June 12, 1980] (Cir. Ct. Montgomery Co., Ala.) (J.A. 33).

Even if the language of Act 434 purportedly imposed a statewide tax, the Alabama Supreme Court should have viewed the legislative history to effect an interpretation consistent with the legislative intent to pass a local bill, because any other construction is at variance with the Act's purpose.

*It is clear that while the court, for whatever reason, wished to consider examination of the legislative history as a discretionary matter, under universally accepted rules of evidence and statutory construction, it had a duty to consider that material, whether it perceived ambiguity or not, and the Court's refusal to consider the legislative history was an arbitrary and capricious exercise of its judicial power.*

**3. *The Court's errors were so gross as to be impossible in a rational administration of justice.***

Another parameter of due process was announced in *Chicago Life Insurance Co. v. Cherry*, 244 U.S. 25 (1917). There it was pointed out that mere error does not deny due process, but a mistake "so gross as to be impossible in a rational administration of justice", *Id.* at 30, does run afoul

of the Due Process Clause. Here the court's actions transcended mistake, as the court's decision was diametrically opposed to the *known* intention of the legislature. Certainly, a decision so arbitrary and capricious as to be without support in the record does not comport with the "rational administration of justice".

It is evident that the court did not seriously attempt to devine the *actual* intent of the legislature. As Chief Justice Marshall pointed out in *United States v. Fisher*, 6 U.S. (2 Cranch) 358 (1804): "Where the mind labors to discover the design of the legislature, it seizes everything from which aid can be derived. . . ." *Id.* at 386. Here, the Alabama Supreme Court refused to take notice of the most appropriate aid, the legislative history, which is "frequently . . . the most fruitful source of instruction as to [a statute's] proper interpretation. . . ." *Flora v. United States*, 362 U.S. 145, 151 (1960). That action suggests that the court did not "labor to discover the design of the legislature" and, beyond question, a rational administration of justice requires the court to examine *all* pertinent materials when construing a statute.

Another measure of the irrationality of the court's administration of justice in this case can be found in the court's explanation of its refusal to examine the legislative history. The court excused its refusal to examine all the pertinent facts, suggesting that it had "no right to stray into mazes of conjecture or search for an imaginary purpose" in construing the Act. 404 So.2d at 4. However, the court's fear of "mazes of conjecture" was entirely a smoke screen, because there was, in fact, *no* conjecture as to legislative purpose evinced in the legislative history. The trial court opinion reflected that the 2% increase was intended by the legislature to apply locally to only one county. Nevertheless, the Alabama Court inexplicably ignored the opinion of the trial court and decided otherwise.

The Fifth Circuit, in *Williams v. Tooke*, 108 F.2d 758 (5th Cir. 1940), addressed a like situation:

> [I]f a case between private parties is arbitrarily and capriciously decided, in violation of settled principles of law and contrary to undisputed facts, though the court so deciding had jurisdiction over the suit, the judgment may be in violation of the 14th Amendment.
> *Id.* at 759.

Here, the case was decided contrary to the law and uncontroverted facts and in a manner repugnant to the rational administration of justice.

4. ***The effect of the court's ignoring the legislative history was to deny a fair hearing.***

The broad contours of the guarantee of due process of law have been defined, in part, to include the right to be heard. In *Baltimore & Ohio Railroad Co. v. United States*, 298 U.S. 349 (1936), this court wrote:

> The due process clause assures a full hearing before the court or other tribunal empowered to perform the judicial function involved. That includes the right to introduce evidence and have judicial findings based upon it.
> *Id.* at 368-69 (footnotes omitted).

Since the intent of the legislature must be ascertained in order to properly interpret a statute, it was certainly essential to Appellants' ability to present their claim that the legislative background be considered.

At trial, Appellants presented undisputed evidence of the

local nature of Act 434, which the fact-finder found conclusive. However, the Alabama Supreme Court made that opportunity to present the most critical evidence of legislative intent nugatory, by ignoring the legislative history on appeal. The Supreme Court's action was tantamount to a retroactive change in the law of statutory construction and evidence, thereby denying Appellants due process of law in its primary sense, i. e., an opportunity to be heard and defend their substantive rights.

In *Brinkerhoff-Faris Trust & Savings Co. v. Hill*, 281 U.S. 673 (1930), this Court, in reversing a state court interpretation of a statute, looked to the "practical effect of the Missouri court [decision which was] to deprive the plaintiff of property without affording it at any time an opportunity to be heard. . . ." 281 U.S. at 678. Here, the practical effect is the same - - by excluding the legislative history, the Alabama Supreme Court put Appellants in the same position as if the evidence most necessary for proper construction of the statute had never been presented at all. The opportunity to present the evidence and be heard at trial was completely nullified by the State Supreme Court.

Because the Alabama Court refused to consider the unrefuted evidence, the court also failed to accord Appellants due process under the *B & O Railroad* formulation, by denying the right to have judicial findings based on the evidence. By ignoring the legislative history, the Alabama Supreme Court negated the trial court's findings as to that compelling evidence. Of course, then, the court did not render a decision based on the evidence.

B.

**The Provision of 1979 Ala. Acts, No. 434, Which Prohibits Producers from Passing on to Consumers the Cost of the Severance Tax Imposed by the Act Violates the Supremacy**

**Clause of the United States Constitution by Attempting to Regulate the Pricing of Oil and Gas, Subjects which are Pre-empted by the Natural Gas Act, the Natural Gas Policy Act, and the Emergency Petroleum Allocation Act**

1. ***A state statute may be pre-empted by federal legislation because Congress intended that no state legislate in the area in question; because the state statute actually conflicts with the federal statute; or because the state statute conflicts with the "purpose and object" of the federal law.***

The Supremacy Clause of the Constitution declares that the law of the United States "shall be the supreme Law of the Land. . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. art. VI, cl. 2.

Federal pre-emption may occur where Congress, acting pursuant to its plenary power, specifically prohibits parallel state regulations. *De Canas v. Bica,* 424 U.S. 351, 356 (1976). However, the congressional intent to displace state regulation is not in all cases articulated, but the congressional intent being manifest, the state regulation must nevertheless fall. Pre-emption occurs "whether Congress' command is explicitly stated in the statute's language or implicitly contained in its structure and purpose." *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977).

Even if Congress did not intend to preclude state action in a given area, when construction of the state and federal statutes reveals a conflict between the two, the state regulation must fall. *Ray v. Atlantic Richfield Co.*, 435 U.S. 151 (1978). Thus, in *Florida Lime & Avocado Growers, Inc. v. Paul,* 373 U.S. 132 (1963), the Court found that "federal exclusion of state law is inescapable and requires no inquiry into congressional design where compliance with both federal and state regulations is a physical impossibility.

. . ." *Id.* at 142-43. However, direct conflict is not required for a state statute to be inconsistent with a federal statute, and pre-emption may occur when the state statute is merely an "obstacle to the accomplishment and execution of the full purpose and objectives of Congress." *Hines v. Davidowitz*, 312 U.S. 52, 67-68 (1941). A state statute, then, is void not only in cases of actual conflict, but also in cases where the state statute is inconsistent with the purpose or goal of the federal statute.

2. ***1979 Ala. Acts, No. 434, is pre-empted by the Natural Gas Act and the Natural Gas Policy Act.***

(a) Legislative history of the Natural Gas Act and the Natural Gas Policy Act.

In 1938, Congress passed the Natural Gas Act, 15 U.S.C. §717, et. seq., regulating the transportation and sale of natural gas in interstate commerce. The Natural Gas Act left certain facets of natural gas pricing and production unregulated, and within the purview of state regulations, most particularly gas being produced or sold in intrastate commerce. 15 U.S.C. §717. The Natural Gas Act was the congressional response to decisions by this Court holding that "the regulation of wholesale rates of gas and electrical energy moving in interstate commerce is beyond the constitutional powers of the State". *Interstate Natural Gas Company v. Federal Power Commission*, 331 U.S. 682, 689 (1947). *See Panhandle Eastern Pipeline Company v. Public Service Commission*, 332 U.S. 507, 519-20 (1947).

Although the jurisdiction granted federal regulatory authorities was not exclusive, Congress intended federal power to be broadly complimentary to that reserved for the states, in order to fill the void which State power could not constitutionally reach. Consequently, this Court has ruled that Congress intended to give the Federal Power Com-

mission, the original federal regulatory authority under the Natural Gas Act, "jurisdiction over the rights of all wholesales of natural gas in interstate commerce, whether by pipeline company or not and whether occurring before, during or after transmission by an interstate pipeline company." *Phillips Petroleum Company v. Wisconsin*, 347 U.S. 672, 682 (1954). In fact, the overriding congressional purpose to exclusively govern wholesale interstate natural gas rates was most recently acknowledged in *Maryland v. Louisiana*, ____ U.S. ____ , 101 S. Ct. 2114, 68 L.Ed.2d 576 (1981), wherein this Court observed that "the [Natural] Gas Act was intended to provide the FPC now the FERC, with the authority to regulate the wholesale pricing of natural gas and the flow of interstate commerce from wellhead to delivery to customers." *Id.*, 68 L.Ed.2d at 596.

The Natural Gas Policy Act, 15 U.S.C. §3301, *et seq.*, extended the regulatory scheme of the Natural Gas Act to intrastate commerce, *see* 15 U.S.C. §§3301 (21) and 3315, and continues the comprehensive federal policy of uniform regulation and control of natural gas pricing. This congressional policy is made manifest by a even a cursory review of the extensive legislative history of the Act, which was summarized by the Court in *Oklahoma v. Federal Energy Reg. Comm.*, 494 F.Supp. 636 (W.D. Okla. 1980):

> The history reveals that the evidence relied on by the Congress was that since 1967, production of natural gas has consistently exceeded new additions to the proved reserves; known gas reserves outside Alaska have declined dramatically, and the interstate market has suffered as a result of this decline; since 1969 more than 80% of all new gas has been committed to the intrastate market, most of the interstate commitments coming from the Federal domain; between 1967 and 1975, reserves dedicated

> to interstate use have dropped 46%, as opposed to a 3% decline in the intrastate market for this period, the volume of gas sold interstate has likewise decreased; the higher prices received in intrastate sales were blamed for the reduction of gas dedicated to interstate markets, and the corresponding shortages of natural gas in non-producing states.
>
> . . .
>
> *Id.* at 654-55. (Footnotes omitted).

The market inequities created by the unregulated intrastate market *vis-a-vis* the regulated interstate market was addressed by the House Committee on Interstate and Foreign Commerce in the following manner:

> A need exists to revise the present system of natural gas pricing by removing the artificial distinction which presently exists between the interstate and intrastate markets. Therefore, the central issue before the Committee during its consideration of natural gas pricing policy was the question whether market equalization should occur through deregulation of the interstate market or through regulation of the intrastate market.

H.R. Rep. No. 496 Part IV, 95th Cong., 2d Sess. 110-111, *reprinted in* 1978 U.S. Code Cong. & Ad. News 8454, 8554-55. *See also*, S. Rep.No. 436, 95th Cong., 2d Sess. 34, *reprinted in* 1978 U.S. Code Cong. & Ad. News 7855, 7882 (testimony of John O'Leary, Administrator, Federal Energy Administration). *See also, Maryland v. Louisiana*, 68 L.Ed. at 596, n. 22.

The choice made by Congress, of course, was total regulation of natural gas pricing, i. e., inclusion of the intrastate

market in the federal regulatory scheme, and the Natural Gas Policy Act resulted.

The Natural Gas Policy Act establishes price ceilings for all natural gas without regard to its interstate or intrastate character. *See*, 15 U.S.C. §3311-19. The Act also dictates those costs which may be recovered without regard to the established ceiling price. *See*, 15 U.S.C. §3320. Finally, and most importantly, the Act vests comprehensive rule making, administrative, and enforcement powers in the Federal Energy Regulatory Commission (FERC). *See*, 15 U.S.C. §3411-15.

(b) 1979 Ala. Acts, No. 434, is pre-empted by the Natural Gas Act and the Natural Gas Policy Act because Congress intended to displace state action in the field of cost allocation and pricing of natural gas.

The legislative history of the Natural Gas Act, as amended by the Natural Gas Policy Act, as well as the comprehensive nature of powers granted to the Federal Energy Regulatory Commission thereunder, evidence a Congressional intent to pre-empt state legislation in the area. The attempt by the Alabama Legislature to dictate production costs allocation is an impermissible trespass on the jurisdiction of the Federal Energy Regulatory Commission. This conclusion is sustained by the Court's reasoning in *Maryland v. Louisiana*, ____ U.S. ____ , 101 S. Ct. 2114, 68 L.Ed.2d 576 (1981), as follows:

> Under the present law, natural gas owners are entitled to recover from their customers all legitimate costs associated with the production, processing, and transportation of natural gas. See *FPC v. United Gas Pipe Line Co.*, 386 U.S. 237, 243 (1967) (cost of service normal-

> ly includes proper allowance for taxes and this allowance is "obviously within the jurisdiction of the Commission").
>
> . . . .
>
> The effect of [Louisiana] Section 1303 (C) is to interfere with the FERC's authority to regulate the determination of the proper allocation of costs associated with the sale of natural gas to consumers. . . . Louisiana has attempted a substantial usurpation of the authority of the FERC by dictating to the pipelines the allocation of processing costs for the interstate shipment of natural gas.
>
> . . . .
>
> Under the Gas Act, determining pipeline and producer costs is the task of the FERC in the first instance, subject to judicial review. . . . Even if the FERC ultimately determined that such expenses should be passed on *in toto*, this kind of decision making is within the jurisdiction of the FERC; and the Louisiana statute, like the state commission's order, in *Northern Natural Gas, supra*, is inconsistent with the federal scheme and must give way. At the very least, there is an "imminent possibility of collision." The FERC need not adjust its rulings to accommodate the Louisiana statute. To the contrary, the state may not trespass on the authority of the federal agency.

*Id.*, 68 L.Ed.2d at 596-97, 598-99 (citations omitted).

Due to the pervasive nature of federal regulation of intra-

state and interstate natural gas pricing and sales, the Pass-Through Prohibition in Alabama Act No. 434 is void - - it is contrary to the established intent of the Natural Gas Act and the Natural Gas Policy Act, and to decisions of this Court relating to federal pre-emption of state legislation.

(c) 1979 Ala. Acts, No. 434, is pre-empted by the Natural Gas Policy Act because the two acts conflict.

Federal policy allows the recovery, by producers, of taxes as they are "normally included as a cost of service. . .", *FPC v. United Gas Pipe Line Co.*, 386 U.S. 237, 243 (1967), and this policy was implemented in the Natural Gas Policy Act. Specifically, §110 of the Natural Gas Policy Act controls severance tax recovery by providing in part:

> Except as provided in Section (b), a price for the first sale of natural gas shall not be considered to exceed the maximum lawful price applicable to the first sale of such natural gas under this subtitle. If such first sale price exceeds the maximum lawful price to the extent necessary to *recover*
>
> (1) State severance taxes attributable to the production of such natural gas. . . .

15 U.S.C. §3320 (emphasis supplied).

Therefore, under the Natural Gas Policy Act, gas producers are allowed to recover the maximum lawful price *in addition to* any state severance taxes, and the Pass-Through Prohibition of Act 434 directly and unconstitutionally conflicts with §110, as Act 434 does not permit recovery of the severance tax through increased price.

Even if 434 is not in direct conflict with §110 of the NGPA, as the Alabama Supreme Court held, nevertheless the Act is

adverse to the object and purpose of the Natural Gas Act and the Natural Gas Policy Act. Under §110 of the Natural Gas Policy Act, the maximum lawful price is computed with reference to, among other things, state severance taxes, and Act 434 interferes with the FERC's ability to monitor and regulate the price and cost allocation of natural gas. At the least, the Pass-Through Prohibition contained in Act 434 is a "substantial hinderance" to the rule making, administrative and enforcement authorities of the FERC. Such frustration of the congressional purpose and objective in enacting the Natural Gas Act and the Natural Gas Policy Act is constitutionally intolerable.

3. ***1979 Ala. Acts, No. 434, is pre-empted by the Emergency Petroleum Allocation Act and subsequent Amendments.***

This Court is thoroughly familiar with the conclusions reached by the trial and appellate courts in both *Mobil Oil Corp. v. Tully*, 499 F. Supp. 888 (N.D. N.Y. 1980), *aff'd.* 653 F.2d 497 (Temp. Emer. Ct. App.), *vacated* ____ U.S. ____ (February 22, 1981), and *Mobil Oil Corp. v. Dubno*, 492 F.Supp. 1004 (D. Conn. 1980), *aff'd. in part* and *appeal dismissed in part*, 639 F.2d 919 (2nd Cir.), *cert. denied*, ____ U.S. ____ (June 22, 1981). - that pass-through prohibitions, in all material respects like that proposed in Act 434, were pre-empted by provisions of the Emergency Petroleum Allocation Act, as the pass-through prohibitions conflicted with the "purpose and object" of the federal enactment. The Courts in *Tully* and *Dubno* concluded that the pass-through prohibitions were pre-empted even though the pass-through prohibitions regulated only products exempted from the EPAA, although presidential standby authority to reimpose the pricing provisions of the EPAA existed. Here, for crude oil, the product in question, the pricing and allocation provisions of the EPAA

were applicable during the efficacy of Act 434, (September 1, 1979 through May 28, 1980), see 46 Fed. Reg. 9409 (1981), with the exception of certain special exemptions, *See, e. g.*, 45 Fed. Reg 3, as amended 45 Fed. Reg. 26311 (1981), and, for those exemptions, presidential authority to reimpose price and allocation controls remained effective. *See* 15 U.S.C. §750(g). *A fortiori,* the conclusion that the EPAA pre-empts the Pass-Through Prohibition of Act 434 is appropriate here.

C.

**Appellants' Pre-Existing Contracts are Unconstitutionally Impaired by the Pass-Through Prohibition and Royalty Exemption of 1979 Ala. Acts, No. 434**

1. ***Appellants' Contract Agreements expressly allocated severance tax burdens.***

It is uncontroverted that the Appellants had made specific contractual agreements concerning increases in severance or similar taxes, prior to the enactment of Act 434. First, each of these Appellants had contracts with interstate and intrastate pipe line purchasers which provided that the buyer would reimburse the seller, one of Appellants, for some percentage of any increase in severance taxes. (*See* stipulation of the parties, P.L. Ex. 11 (J.A. 182-85), 12, 13; Adm. J.A. 185-86). Second, Appellants had lease agreements with lessors of oil and gas producing lands which required the lessors bear severance taxes in proportion to the lessor's respective participation in the production (*See, e. g.,* stipulation of the parties, Pl. Ex. 11 (J.A. 182-85); Adm. 185).

2. ***The Pass-Through Prohibition and Royalty Exemption completely negate Appellants' express contract provisions.***

The Pass-Through Prohibition, which prohibits Appellants (as producers/sellers of oil and gas) from passing on the cost of the increase in tax, and the Royalty Exemption, which taxes Appellants (as lessees under oil and gas leases) with the royalty owners' share of the increase in tax, deprive Appellants of important contractual rights in violation of the Contract Clause of the United States Constitution. The other parties to the sales agreements and leases were obligated under those contracts to bear all or part of the burden of any increased tax, such as the one imposed by the act. "The obligations of a contract are impaired by a law which renders them invalid, or releases or extinguishes them, [or] derogate[s] some substantial contractual rights." *Home Building & Loan Association v. Blaisdell,* 290 U.S. 398, 431 (1934) (footnotes, citations omitted). Act 434 clearly impairs the obligations of the contracts in question.

The impairment of contracts question was considered in a like situation in *Barwise v. Sheppard,* 299 U.S. 33 (1936), where the Court considered the constitutionality of a Texas statute which imposed a severance tax on all oil and gas production, including production owned by royalty owners. The lessors/royalty owners contended that, because the terms of their oil, gas and mineral leases provided their interest in production would be "free of costs", the imposition of the tax on the royalty interest unconstitutionally abrogated their contractual rights. This Court held that the "free of costs" provision of the leases could not bar the state from *imposing* a privilege tax on the lessor's share of production, although the Court assumed that the parties were free to contract as to who would absorb the tax burden. The Court wrote:

> Plainly no stipulation in the lease can be of any avail as against the power of the state to impose the tax, prescribe who shall be under a duty to the state to pay it, and fix the time and mode of payment. *And this is*

> *true even though it be assumed to be admissible for the lessors and lessee to stipulate as to who, as between themselves, shall ultimately bear the tax.*
> *Id.* at 40 (emphasis supplied).

The rule established by *Barwise* is that the state may *impose* a tax and designate the party who is required to account for and remit the tax to the state; however, private contractual arrangements as to who will bear the ultimate burden of the tax may not be abrogated by a taxing statute.

The Alabama Supreme Court misapplied the *Barwise* rule and merely held that:

> [I]t is clear that parties to a private contract cannot limit a state's *ability to levy* taxes. . . . Thus, although one party to the contracts involved here may receive less than anticipated as a result of Act No. 79-434, such a decrease does not amount to an impairment of the contracts.

*Eagerton v. Exchange Oil and Gas Co., Inc.*, 404 So.2d 1, 6 (Ala. 1981) (emphasis supplied).

Although the Alabama Supreme Court correctly stated a legal principle recognized in *Barwise*, the court completely ignored the issue presented to it by Appellants - - that the Royalty Exemption and Pass-Through Prohibition impaired Appellants' pre-existing contracts as to who would bear additional tax burdens.

Appellants did not contend in the Circuit Court or in the Alabama Supreme Court, nor do they contend now, that their private contracts, either with royalty owners or with wholesale purchasers, limit the state's ability to levy new taxes or excuse them from collecting or paying the new

tax. To the contrary, Appellants' contracts expressly anticipate that taxes would be levied at existing or higher rates, and the contracts work to allocate the tax burden. The Pass-Through Prohibition and Royalty Exemption provisions are unconstitutional because they negate these prior contractual provisions as to who will ultimately bear the tax.

Appellants' express contract provisions serve to distinguish the present case from arguably similar cases in which the challenged law did not *directly* effect the contract. For example, in *Barwise v. Sheppard,* critical to the Court's conclusion that the severance tax was not unconstitutional was that "[t]he lease contain[ed] no mention of taxes or of their payment." *Id.* at 40. Further, the "taxing act [did] not purport to reach or effect any term of the lease." *Id.* Here, Appellants' lease and sales agreements *do* expressly provide for allocation of new severance tax burdens, and, as discussed below, those terms of the lease are directly effected by Act 434.

3. ***Act 434 substantially impairs Appellants' contractual relationships.***

Article I, Section 10, Clause 1, simply states that "No state shall . . . pass any. . .law impairing the obligations of contracts. . . ." This Court has repeatedly said that "the absolute language of the [Contract] Clause must leave room for 'the "essential attributes of sovereign power," . . . necessarily reserved by the States to safeguard the welfare of their citizens' ", *Allied Structrual Steel Co. v. Spannaus,* 438 U.S. 234, 244 (1978) (quoting *United States Trust Co. v. New Jersey,* 431 U.S. 1, 21 (1977) ), but it is equally clear that the "power has limits when its exercise effects substantial modifications of private contracts." *Allied Structural Steel Co. v. Spannaus,* at 244.

In *Spannaus,* the Court, in determining whether the contract clause had been violated, said that "the first inquiry

must be whether the state law has, in fact, operated as a substantial impairment of a contractual relationship." *Id.* (footnote omitted). Act 434 effected a substantial impairment of Appellants' contracts, both in terms of substantial and immediate economic loss, and in terms of the frustration legitimate contractual expectations.

(a) Appellants suffered economic loss.

One measure of the substantiality of the obligation placed on Appellants is the actual dollar amount of the increased obligation. In the period during which payments were exacted under the act Appellants were compelled to pay millions of dollars in increased severance taxes which had been contractually allocated to other parties. Such a burden, which shifted payment obligations from one party to another, significantly alters the careful balance of interests which arose from the bargaining process.

(b) Appellants suffered frustration of their legitimate contractual expectations.

More important than the immediate economic costs of the act's impairment of Appellants' contracts is the destructive effect of such a law on contracts generally. As Mr. Justice Stewart wrote for the *Spannaus* Court:

> The severity of an impairment of contractual obligations can be measured by the factors that reflect the high value the Framers placed on the protection of private contracts. Contracts enable individuals to order their personal and business affairs according to their particular needs and interests, Once arranged, those rights and obligations are binding under the law, and the parties are entitled to rely on them.

The Court went on to assess the impact of a Minnesota law which imposed greater pension funding obligations on an employer than had been contracted for. Noting that the company had no reason to anticipate a change in its pension obligations, the Court found that the company "relied heavily, and reasonably, on this legitimate contractual expectation in calculating [its pension plan obligations]." *Id.* at 246.

In the present case, Appellants placed equal reliance on express contract provisions which were designed to define the companies' costs of production. Concern over increased severance taxes were substantial enough to cause Appellants to specifically provide for them in each of the contracts in question. Here, as in *Spannaus*, "a basic term of the . . . contract . . . was substantially modified." *Id.* The Pass-Through Prohibition and Royalty Exemption, like the unconstitutional Minnesota statute "compelled [Appellants] to exceed bargained-for expectations and nullified an express term" of the contracts. *Id.* at n. 18.

The Appellants found it necessary to anticipate changes in severance taxes, and to contractually allocate such costs. If provisions like the Pass-Through Prohibition and the Royalty Exemption are found to be valid, oil companies will be unable to predict production costs related to oil and gas drilling. Such unpredictability will make it inadvisable to enter into some drilling and exploration contracts. A company making a contract decision will face the possibility that a state would increase applicable taxes (similar to the 2% imposed by this Act, or more) and prevent any recovery of that increased production cost. Such an impairment of commercial intercourse would be intolerable.

4. ***The Pass-Through Prohibition and Royalty Exemption serve no legitimate public purpose.***

(a) The Royalty Exemption does not advance a legitimate public purpose.

This Court has repeatedly held that an exercise of state sovereign power which affects private contractual agreements must serve a public need, and not the interest of private individuals or a particular group. *See, e. g., Home Building & Loan Association v. Blaisdell,* 290 U.S. 398 (1934); *Ochiltree v. Railroad Contracting Co.,* 88 U.S. 249 (21 Wall.) (1875). In the case at bar, the Royalty Exemption served just such a private or individual purpose. Appellants, parties to contractual agreements, are deprived of their right to require partial payment of increased severance taxes, and the benefit of that deprivation inures to the royalty owners, the other parties to the contract.

The Royalty Exemption is impermissible for the same reason as the provision struck down in *Treigle v. Acme Homestead Assoc.,* 297 U.S. 189 (1936). In *Treigle,* the State of Louisiana sought to abridge the contractual rights of withdrawing loan association members. This Court held that the measure impermissibly "deprive[d] [the] withdrawing members of a solvent association of existing contract rights, for the benefit of those who remained." *Id.* at 198.

The royalty provision is particularly egregious because it benefits a chosen group of contract parties. The state can assert no legitimate public purpose for the exemption, because the exemption was, from its inception, intended to benefit a small group of influential landowners in the sponsor's district. (*See* J.A. 132-33). The admonition of the *Treigle* Court, that "the questioned sections deal only with private rights." *Id.,* is equally appropriate here.

(b) The challenged provisions cannot be justified as reasonable and necessary to effect a legitimate public purpose.

The Pass-Through Provision and Royalty Exemption are not reasonable or necessary to effect any legitimate public purpose sought by Act 434. This Court requires that a state show that an impairment of contract is "both reasonable and necessary to serve. . . important purposes claimed by the state." *United States Trust Company v. New Jersey*, 431 U.S. at 29. Here, the two provisions are totally unnecessary, because they do not serve the purpose of raising revenue for the state. If the provisions were omitted entirely, the public need would still be served - the total revenues produced by the act would not be reduced at all.

In any case, the State's interest in this case does not rise to the level of need required to justify an impairment of contract. This Court has required a pressing public concern to justify such an impairment. In several contract clause cases, an emergency situation of the magnitude of the Great Depression provided the instance or solution to social problems which could only by met be abrogating contracts. *See, e. g., W. B. Worthen Company v. Thomas*, 292 U.S. 426 (1934); *Home Building & Loan Association v. Blaisdell*, 290 U.S. 398 (1934).

As was the case in *Spannaus*, Act 434 was not "enacted to deal with. . .broad and desperate emergency economic conditions". *Allied* Structural *Steel Company v. Spannaus*, 438 U.S. at 249. While the possible justification for an exercise of state power which abridges contracts is not limited to emergencies, some "serious social problem", *Allied Structural Steel Company v. Spannaus*, 438 at 252 (Justice Brennan, dissenting) must be addressed. The routine matter of a tax increase is not the sort of social legislation which can justify a contract impairment.

## D.

**1979 Ala. Acts, No. 434, Violates the Equal Protection Clause of the Fourteenth Amendment not only by Discriminating Among the Class of All Oil and Gas Production Owners Including Royalty Owners and Working Interest Owners, but also by Discriminating Among Working Interest Owners**

1. ***A taxing statute must treat equally those who are similarly situated.***

The Fourteenth Amendment protects against taxation which is palpably arbitrary or grossly unequal in its application to the persons concerned. *Dane v. Jackson*, 256 U.S. 589 (1921). Thus, a state taxing statute according differential treatment to persons must make its distinction between those persons on a rational basis, and with a legitimate purpose. *Western & Southern Life Insurance Company v. State Board of Equalization*, 451 U. S. 648 (1981), and the taxing statute must operate alike on all those persons similarly situated. *WHYY v. Glassboro*, 393 U. S. 117 (1968); *Hopkins v. Southern California Telephone Co.*, 275 U.S. 393 (1928).

The various owners of production (producers) of oil or gas are merely joint venturers and co-owners of the mineral estate, sharing pro-rata the well's production in return for their respective contributions to the venture. See *Barwise v. Sheppard*, 299 U. S. 33, 39 (1936). The attempt, by way of the Royalty Exemption, to exempt one owner of production from payment of the 2% increase in the severance taxes unquestionably violates the Equal Protection Clause of the Fourteenth Amendment, as the exempted owner is situated no differently from the other owners. Additionally, the Royalty Exemption is especially discriminatory in that the working interest owners are required to disproportionally bear the royalty owner's share of the severance tax.

2. *Act 434 discriminates among that class of oil and gas owners including royalty interest owners and working interest owners.*

The Severance Tax is levied "upon every person engaged . . . in the business of producing or severing oil or gas." Act 434, §1(a). The tax is levied on all production, including that of the royalty interest, Act 434, §1(b), and the tax is levied in proportion to ownership. Code of Ala., §40-20-3(a) (1975). Additionally, a "producer", under the Act, is "any person engaging . . . in the business of oil and gas production, . . . *including [owners receiving] royalty or rental from oil and gas produced.* . . ." Code of Ala., §40-20-1(8) (1975) (emphasis added). Thus, for purposes of the Severance Tax Article, working interest owners and royalty interest owners are members of the same tax classification, i. e., owners of production.

More importantly, this Court, in *Barwise v. Sheppard,* 299 U. S. 33 (1936), held constitutional a Texas severance tax which taxed production of all owners in proportion to their respective interests. The Court recognized that the lessor/royalty owners and the lessee/working interest owners, as co-owners and joint-venturers in the production of minerals, are members of the same taxing classification. *Id.* at 39. Thus, this Court is rightfully committed to the proposition that a severance tax is reasonable where the tax is equally apportioned among all of the various mineral interest owners because there is no basis upon which to distinguish one owner from another. See also, *Lake Superior Consolidated Iron Mines v. Lord,* 271 U.S. 577 (1926).

The Alabama Supreme Court ruled that, as to the 2% tax increase, royalty interests in the mineral estate could properly be placed in a class apart from other interests. However, that court failed to appreciate that the Alabama

Severance Tax Article provides that all mineral owners are part of the same tax classification. Additionally, the Alabama Court failed to realize that a royalty owner is no more than a joint venturer with the working interest owners, sharing in kind the production of a well. Although the state's interest in encouraging oil and gas exploration is significant, it is not reasonable to believe that working interest owners, whose share in oil or gas production is indistinguishable from that of the royalty interests, should be singled out for discriminatory treatment.

The effect of the Alabama Supreme Court's ruling is that the 4% portion of the tax is borne by all owners in proportion to their fractional ownership interest, as required by Code of Ala. §40-20-3(a) (1975), but the 2% increase levied by Act 434 is borne entirely by the working interest owners. The class which the Legislature selected in §40-20-3(a) is *all owners* of production, and this is per se a just and reasonable classification under the Alabama Severance Tax Article and under *Barwise*. It is this reasonable classification which Act 434, as construed by the Alabama Supreme Court destroys, by purporting to tax oil and gas production derived from the same mineral estate disproportionately to the mineral interest ownership.

The bottom line paradox resulting from the Alabama Supreme Court's decision is that the 4% portion of the tax is levied pro rata, proportionate to ownership, on both royalty and working interest owners, under the reasonable class of all owners, but the 2% tax increase is not levied in proportion to ownership. Thus, the Alabama Supreme Court holds that the royalty owner is not to be classified with working interest owners as to the 2% portion of the tax, but that royalty owners and working interest owners are part of the same classification for purposes of the 4% portion of the tax! The illogic of the Alabama Supreme Court's opinion is apparent - the court has done nothing more than rubber stamp the Act's invidious discrimination

against non-royalty owners.

3. ***Even if working interest owners and royalty interest owners are not within the same taxing classification; nevertheless, Act 434 discriminates among working interests owners.***

The Alabama legislature chose to levy an additional 2% tax on *all* oil and gas production, and the tax was to be paid by *all* those producing or severing the oil or gas, except owners of royalty interests. Since, in this case, the royalty interests, exempted from taxation, range in amounts of up to 54% of the minerals severed, *Exchange Oil and Gas Corp. v. Eagerton*, [Ms. June 12, 1980], Cir. Ct. of Montgomery County, the resulting tax on the other mineral interests (working interests) is in varying disproportion to the actual working interest owned. The result is that working interest owners bear the tax burden of the exempt royalty owners, and, among working interest owners, the tax is imposed regressively. That is, the smaller the working interest, the greater the tax burden in proportion to that interest.

Even assuming for argument that royalty owners are not to be included in the class of all producers including working interest holders; nevertheless, the tax does not operate uniformly among working interest holders. If, as the Alabama Supreme Court speculated, the taxing scheme was designed to pursue the legitimate purpose of encouraging oil and gas production, see *Eagerton v. Exchange Oil and Gas Corp.*, 404 So.2d 1, 5 (Ala. 1981), certainly, statutory classifications distinguishing among working interest owners do not "rest on difference pertinent to the subject in respect of which the classification [was] made". *Power Manufacturing Co. v. Saunders*, 274 U.S. 490, 494 (1927).

No tax on production can be said to encourage production, and that is especially true when the tax is levied entirely on those responsible for costs of exploration, drilling and the

dry hole risk, and in amounts disproportionate to the working interest owned. There can be no rational basis to believe that the tax, as imposed, would encourage oil and gas production, and the taxing statute is palpably arbitrary and grossly inequal in its application to the working interest owners.

## CONCLUSION

Even oil companies are entitled to their constitutionally ordained rights, regardless of the State's financial needs.

For the foregoing reasons, and under the authorities cited, the opinion and judgment of the Alabama Supreme Court is due to be reversed.

Respectfully submitted,


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No. 81-1268

In The
SUPREME COURT OF THE UNITED STATES
October term, 1981

EXCHANGE OIL and GAS CORPORATION,
GETTY OIL COMPANY and UNION OIL COMPANY
of CALIFORNIA

Appellants,

v.

RALPH EAGERTON, JR., as Commissioner of Revenue
of the State of Alabama, et al.,

Appellees.

On Appeal From the Supreme Court
of the State of Alabama

PROOF OF SERVICE

I, RAE E. CROWE, one of the attorneys for Exchange Oil and Gas Corporation, Getty Oil Company, and Union Oil Company of California appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 30th day of August, 1982, I served copies of the foregoing Brief of Appellants on all parties required to be served, as follows:

1. On appellee herein, Ralph P. Eagerton, Jr., as Commissioner of Revenue of the State of Alabama, by depositing a copy in a United States Post office, with first class postage prepaid, addressed to John J. Breckenridge, his counsel of record, at 201 Administrative Building Montgomery, Alabama 36130.

2. On all other parties to the proceeding below, by depositing copies in a United States post office, with first class postage prepaid, addressed to their respective attorneys of record, as follows:

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3. On Amici United States of America and The Federal Regulatory Commission as follows:

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# Appellant's Reply Brief

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NO. 81-1268

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1981

EXCHANGE OIL AND GAS CORPORATION, et al.,
Appellants,

versus

RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama,
Appellee.

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF ALABAMA

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## ARGUMENT

### I.

### THE COURT HAS JURISDICTION OF THIS APPEAL.

In his Brief, the Commissioner continues his attempt to confuse the Court and totally obfuscate the record, contending, as he did in his Motion to Dismiss, that there are proceedings pending below in the Supreme Court of Alabama to which Appellants[1] are parties. The Commissioner brashly asserts:

> In their Briefs and in oral argument before the Supreme Court of Alabama [on the Appeal following remand], the Appellants Exchange Oil and Gas Corporation, Getty Oil Company and Union Oil Company of California raise many of the same issues they are raising in the present Appeal now before this Court. As of the present date, the Supreme Court of Alabama has not issued its decision concerning the appeal of the Commissioner of Revenue and cross-appeal of the oil companies. Therefore, the Appellee, Ralph P. Eagerton, Jr., as Commissioner of Revenue of the State of Alabama, submits that the judgment appealed by the Appellants in the present action is not a "final judgment or decree" as required by 29 U.S.C. § 1257 (2) and as alleged by the Appellants in the present action . . .. It is incomprehensible to the Appellee that this point has been overlooked by the Court . . ..

Brief of Appellee, P.2

These statements are totally unsupported. Not only were these Appellants not parties to the second appeal before the Alabama Supreme Court, but also there were no constitutional issues in the state's second appeal to the Alabama Supreme Court.

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[1] The listing required by Rule 28.1 is contained in Appendix (vi) of Appellants' Jurisdictional Statement.

The true facts are:

(A) The appeal before this Court is taken from the ruling of the Supreme Court of Alabama which reversed the Circuit Court of Montgomery County and held (1) that Act 79-434 applied to all production on a state-wide basis and (2) that portions of the Act were constitutional;

(B) The case was remanded by the Alabama Supreme Court to the Circuit Court of Montgomery County with respect to, and only with respect to, construction of the partial exemption for wells producing less than 26 barrels of oil per day, which exemption was claimed by producers *not* parties to this Appeal. *See* Appellants' Brief in Opposition to Appellee's Motion to Dismiss, pp. 2-7. On remand, the Circuit Court of Montgomery County held that the so-called 26 barrel exemption applied to *all* wells, i.e., both oil and gas wells. This ruling affected only pure gas producers, none of which are parties to this appeal. The Commissioner then appealed that decision to the Supreme Court of Alabama. Again, the Appellees therein were not parties to this appeal[2] and only sought construction of an exemption in the Act; and

(C) On December 10, 1982, the Supreme Court of Alabama rendered its decision on the second appeal taken by the State of Alabama, which appeal contained no federal or constitutional issues. This appeal is styled *Eagerton vs. Terra Resources, Inc.*, Alabama Supreme Court No. 81-128. A copy of the decision is included as Appendix 1, and even a cursory review of the decision shows beyond all doubt that the case does not effect or pertain to a single question before this Court, despite the Commissioner's wrongful assertions. There is not a single issue common to the appeals. The Commissioner's statement that these Appellants were parties to the second appeal taken by the State to the Alabama Supreme Court is simple fantasy.

---

[2]Those producers claiming the 26 barrel exemption were Terra Resources, Inc., Petroleum Corporation of Texas, Pruet Production Company, Warrior Drilling and Engineering Co., Inc., and Anderman Operating Company, none of which are Appellants before this Court.

Of course, the Commissioner ignores, as indeed he must, the well-established rule that, where the State Court's decision on a federal constitutional question is final, independent of, and unaffected by a state question which remains to be decided, the ruling from the highest state court is final for purposes of 28 U.S.C. § 1257. *Radio Station WOW, Inc. v. Johnson*, 326 U.S. 120 (1944). *See also, Cox Broadcasting Company v. Cohn*, 420 U.S. 469 (1975); *North Dakota State Board of Pharmacy v. Snyder's Drugstores*, 414 U.S. 156 (1973). A review of the opinion *Eagerton v. Terra Resources, Inc.* ____ So. 2d ____ (December 10, 1982, Ala.), attached as Appendix 1, reveals, without question, that the issues remaining for decision on remand involved non-federal questions not presented herein. Indeed, Appellants only course to preserve the questions for review by this Court was by appeal from the Alabama Court's opinion and order in the case styled *Eagerton v. Exchange Oil and Gas Corporation*, 404 So. 2d 1 (Ala. 1981). *See, North Dakota State Board of Pharmacy v. Snyder's Drugstores*, 414 U.S. 156, 162 (1973).

The Commissioner's Motion to Dismiss, and dogged insistence that judgment is not final for purposes of this Court's review, is nothing more than a charade which is obviously designed to divert attention from the enormous constitutional deprivations suffered by these Appellants. To restate, the appeal by the State, the second appeal, Eagerton v. Terra Resources, No. 81-128:

(1) did not involve a single issue presented to this Court;
(2) did not involve any of the party Appellants before this Court; and,
(3) did not involve the constitutional questions presented herein, but involved only a question of construction of the 26 barrel exemption, not an issue before this Court.

## II.

## THE PASS-THROUGH PROHIBITION CONTAINED IN ACT 434 IS PRE-EMPTED BY THE NATURAL GAS ACT, THE NATURAL GAS POLICY ACT AND THE EMERGENCY PETROLEUM ALLOCATION ACT.

(A.) The Pass-Through Prohibition is pre-empted by the Natural Gas Policy Act.

The Commissioner addresses only Appellants' argument that Section 110 of the Natural Gas Policy Act is in direct conflict with the Pass-Through Prohibition, having no reply to Appellants' argument that Congress intended no legislation in the area of pricing and cost of natural gas, and Appellants' argument that the Pass-Through Prohibition conflicts with the purpose and object of the Natural Gas Act and the Natural Gas Policy Act. Furthermore, in order to "harmonize" the Pass-Through Prohibition and Section 110 of the Natural Gas Policy Act, the Commissioner must engage in a game of semantics and suggest that it is perfectly permissible for Appellants to disobey provisions of the Alabama Severance Tax Statute. The Commissioner's argument is necessary because the two provisions conflict on their face.

In his attempt to address the conflict between the Pass-Through Prohibition and Section 110, the Commissioner writes:

> It is the position of the Commissioner of Revenue that Act 79-434 does not conflict with Section 110(A) (1) of the NGPA. The Commissioner believes that the seller may include in the lawful maximum price an amount equal to Alabama Severance Taxes borne by the seller resulting from the production of natural gas. The Commissioner believes that it was the intent of the Alabama legislature in adopting the Pass-Through Prohibition that it did not want to be perceived as levying an additional tax on the consumer. Therefore, it prohibited anyone from passing along the increase levied by Act 79-434 *as a tax*.

Brief of Appellee, p. 17 (emphasis in original).

Thus, it is the Commissioner's argument that Appellants, by fraudulently mislabeling the severance tax as

another item of cost, may circumvent provisions of Act 434 and thereby recover the severance tax as provided by Section 110 of the Natural Gas Policy Act. The Commissioner is arguing that the Appellants could practice legal fraud, deceit or deception and thereby recover the taxes. This is, indeed, a shocking suggestion from the Commissioner of Revenue of a sovereign State.

Ignoring for the moment the Commissioner's suggestion that Appellants violate the express provisions of the Pass-Through Prohibition, the Commissioner apparently fails to recognize that a maximum lawful price is provided by the NGPA. Even if the severance tax is labeled as some other item of cost, it cannot be recovered by a price hike beyond the maximum lawful price. Obviously, the Commissioner's argument is absurd, for under the NGPA the cost of a severance tax is recoverable beyond the maximum lawful price only if labeled as a severance tax, and, of course, the Pass-Through Prohibition does not permit recovery of the tax. The two provisions cannot be made harmonious by mislabeling the cost associated with the tax.

The Commissioner also excuses the inconsistency between the two provisions by asserting that the NGPA applies only to "sellers" as opposed to "producers or severers".

> The Commissioner would also point out that Section 110(A) (1) of the NGPA specifically requires that the seller may include in the maximum lawful price only state severance taxes *borne by the seller* as the result of the production of such natural gas. Thus the requirement of Act 79-434 that the severance tax must be borne by the producer or severer of the oil or gas could in no way be in conflict with the provision of the NGPA that requires the first seller of the natural gas to bear the state severance tax in order to include such tax in the lawful maximum price. In the requirement that the severance tax be borne

> by the producer or the seller of the oil or gas, Act 79-434 and Section 110(A) (1) of the NGPA dovetail exactly.

Brief of Appellee, p. 18 (emphasis in original).

Apparently, the Commissioner is unable to equate the "first seller" under the NGPA and the "producer or severer" under Act 434.

However, a "producer or severer" is also a "first seller" under the NGPA, *see* 15 U.S.C. § 3301 (21), as the "producer or severer" must also market the minerals extracted. Indeed, it was stipulated in the record that Appellants/producers sell directly from the wellhead to interstate pipeline companies, *see e.g.*, J.A. 182, and in a real and legal sense Appellants are "first sellers". Hence, we return to the proposition that the NGPA permits the producer or severer to pass along a severance tax, and the Pass-Through Prohibition prohibits it. Such a conflict is constitutionally impermissible, and the Pass-Through Prohibition is pre-empted by the NGPA.

B. The Pass-Through Prohibition is pre-empted by provisions of the Emergency Petroleum Allocation Act.

The Commissioner contends that the issue of whether the Pass-Through Prohibition is pre-empted by provisions of the EPAA has been previously considered by this Court in *Tully v. Mobil Oil Corporation*, _____ U.S. _____, 102 S.Ct. 1042, 71 L.Ed. 2d. 120 (1982). In that case, this Court vacated the judgment of the Temporary Emergency Court of Appeals because provisions of the EPAA had expired, writing:

> Now that the operation of the Pass-Through Prohibition is not blocked by conflicting federal law, a question arises as to the degree to which the resolution of [the question of the oil companies' authority to pass through taxes accruing prior to October 1] will turn on the earlier finding of pre-emption, even if

> correct. Is there, for example, any federal interest that would prevent the state of New York from now enforcing this law so as to prevent Appellees from passing through taxes which accrued prior to October 1?

*Id.* 71 L.Ed. 2d at 124.

Thus, this Court did not reject Appellants' argument that the Pass-Through Prohibition is pre-empted by the EPAA,[3] but, instead, the Court simply questioned whether there was a "continuing federal interest" which mandates the invalidation of a state tax where the pre-empting federal statute is subsequently repealed or expires by its own terms.

As noted in Appellants' original Brief, for crude oil[4] the express pricing and allocation provisions of the EPAA were applicable *during* the efficacy of Act 434, with certain minor exemptions. Pursuant to Act 434, Appellant's paid and absorbed the tax in question and were prohibited from passing its cost to consumers. The question now is whether Appellants may recover millions of dollars *paid under protest to the State* by reason of a statutory provision which, at the time, was constitutionally unsound. Based, in part, on Appellant's belief that the Pass-Through Prohibition was unlawful, Appellants challenged the statutory provision, by way of a suit for refund, in the circuit court and in the Alabama Supreme Court, and not until this case was in the breast of this Court did provisions of the EPAA expire. Certainly a case or controversy exists within the meaning of *Powell v. McCormack,* 395 U.S. 486 (1969).

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[3] Cf. Shell Oil Co. v. New York State Tax Commission, App. Div. 3rd, Nos. 43145 and 43362, wherein the New York Court held that the same excise tax considered in *Tully* violated the commerce clause of the U.S. Constitution.

[4] These Appellants are producers of both gas and oil, and both products are affected by the Pass-Through Prohibition.

It is also true that the constitutional violation is not erased by the subsequent expiration of the federal pre-empting provisions. If, as concluded in *Tully*, congressional policy and objectives precluded a Pass-Through Prohibition such as was included in Act 434, a significant federal interest requires continued vindication of those objectives. That the objectives are no longer desirable does not mitigate their validity at the time Congress sought to achieve them. The objectives of the EPAA, or any other statute for that matter, are not fostered by the prospect that the statute will be encroached by state enactment with the probability that any constitutional challenge will never reach this Court or even, in cases, Federal Appeals Courts.

## *III.*

## THE ALABAMA SUPREME COURT DENIED APPELLANTS DUE PROCESS OF LAW

A. Whether the evidence of legislative intent is admissible is not at question; rather the issue is whether the Alabama Supreme Court may ignore relevant evidence which it held was admissible.

The Commissioner argues, without benefit of any citation of authority, that the undisputed evidence of legislative intent, the bulk of which was admitted into evidence without objection, is "rank hearsay". Brief of Appellee, p. 28. However, the admissibility of this evidence is not here at issue, because the Alabama Supreme Court simply did not address the evidence or consider its weight. The Alabama Supreme Court refused to consider the evidence of legislative intent, dismissing it out of hand with the simple statement that:

> Although the Appellees [Appellants herein] put forth various forms of extrinsic evidence, *some of which* was clearly inadmissible, in order to prove the intent of the legislature, the *general rule* is that when the intent of the legislature can be determined from the language of the statute itself, we do not need

> to resort to extraneous matters to determine the legislative intent.

*Eagerton v. Exchange Oil and Gas Corp.*, 404 So. 2d 1, 4 (Ala. 1981) (emphasis supplied).

Thus, the Commissioner again attempts to divert attention from the real issue, i.e., whether the Alabama Supreme Court may, consistent with the due process clause, ignore its duty to give effect to the established legislative intent of a statute.

B. The plain meaning rule must bow to the plain intent of the legislature.

It is axiomatic that the legislature's intent *is* the law. *See e.g., Jones v. Guaranty and Indemnity Company*, 101 U.S. (11 Otto) 622, _____ (1880); *Abramson v. Hard*, 229 Ala. 2, 6, 155 So. 590, 593 (1934). Whether the Court may invoke the plain meaning rule to divine the intent of the legislature, where the intent is uncertain or unknown, is an entirely different question from that of whether the Alabama Court may post hoc invoke the plain meaning rule to override the legislative intent which had already been proven by admissible evidence. The former may be a rule of construction, but the latter is no more than legislating by judicial fiat.

A noted authority commented on the inappropriateness of the plain meaning rule to exclude extrinsic evidence which would shed light on legislative intent:

> Because issues as to what a statute means or what a legislature intended are essentially issues of fact, even though they are decided by the Judge and not by a jury, a court should never exclude relevant and probative evidence from consideration.

2A Sutherland, Statutes and Statutory Construction § 45.02 at 4 (Sands, Ed., 4th ed., 1973).

Likewise, this Court rejected the plain meaning rule as barring useful extrinsic evidence in *Boston Sand and Gravel Company v. United States*, 278 U.S. 41 (1928):

> It is said that when the meaning of language is plain we are not to resort to evidence in order to raise doubts. That is rather an axiom of experience than a rule of law and does not preclude consideration of persuasive evidence if it exists.

*Id.* at 48. *See also, Tidewater Oil Company v. United States*, 409 U.S. 151, 157 (1972); *Flora v. United States*, 362 U.S. 145, 151 (1960); *Harrison v. Northern Trust Company*, 317 U.S. 476, 479 (1943).

Thus, the plain meaning rule is only one means of determining the legislative intent, and should not be regarded as the exclusive means to divine that intent.

This principle has been consistently recognized by the Alabama Court. In *Lewis v. Hitt*, 370 So.2d 1369 (Ala. 1979), the court noted its duty to determine the legislative intent: "In interpreting the provisions of a statute, we are required to ascertain the intent of the legislature and to effectuate that intent". *Id.* at 1370 (citations omitted). In order to discover the intent of the legislature, the Alabama Supreme Court has held that it is not confined to a facial examination of the statute, noting that "in construing statutes, it is our duty to examine the legislative history in order to ascertain the true intent of the lawmaking body." *Morris v. State*, 271 Ala. 290, 292, 122 So.2d 914, 915 (1960). The court, then, recognizes its duty to go beyond the face of the statute to determine the legislative intent.

The Alabama Court likewise recognizes that the plain meaning rule is simply that, a general rule of construction, and not an end in itself. In *Alabama Industrial Bank v. State ex rel. Avinger*, 286 Ala. 59, 237 So.2d 108 (1970), cited by the *Eagerton* Court, the Court wrote: "All particular rules for construing statutes must be regarded as subservient to [the] end of determining legislative intent."

286 Ala. at 62, 237 So.2d at 111. A similar pronouncement as to the paramount importance of the legislative intent was made by the court in *Edmonson v. Brewer*, 282 Ala. 336, 211 So.2d 469 (1968): "The cardinal rule in interpreting constitutional and legislative provisions, *to which all other rules are subordinate*, is that the court must ascertain and give effect to the true legislative intent". *Id.*, 282 Ala. at 343, 211 So.2d at 476 (citations omitted) (emphasis supplied).

The Commissioner argues at pages 31 and 32 of his brief that Act 434 is unambiguous and that the court is, therefore, precluded, as a matter of law, from considering the legislative history and intent of the statute. However, even a casual examination of the statute reveals its patent ambiguity,[5] and, as shown above, the law is that the meaning of even a facially unambiguous statute is not absolutely controlled by the plain meaning of its words. Rather, the ultimate meaning of the statute is determined by what the legislature intended it to be. Where, as here, the statute is most ambiguous and where there is overwhelming and uncontroverted evidence of the legislative intent, that intent is controlling.[6] The plain meaning rule is subordinate to the legislative intent, and the plain meaning

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[5] For example, if the depth proviso, which "limits" the 2% increase to the designated depth interval (15,000-15,800 feet), modifies the immediately preceding sentence (the so-called 10 year moratorium on the 2% increase for new wells), as the Alabama Supreme Court held, then the absurd result is that only Escambia County wells would be entitled to the 10 year exemption from the increase. Construing the word "increase" uniformly through the statute would then effectively limit the royalty exemption and 26 barrel exemption likewise to only Escambia County. Such a result is itself unconstitutional See Ptasynski v. United States, _____ F. Supp. _____ (D.C. Wyo., Nov. 1982) (The Windfall Profits Tax is unconstitutional because Alaska crude is exempted from the tax.)

[6] We invite this Honorable Court to read the contrasting treatment given by the Supreme Court of Alabama to the same statute in this case and in the case construing the 26 barrel exemption. In this case the Alabama Supreme Court refused to consider the legislative history, and in the "26 barrel" decision it *refused* to consider the "plain meaning" of the exemption, thereby to devine a non-existant legislative intent. The "26 barrel" opinion is included as Appendix 1.

rule cannot be used to negate admissible, relevant, and overwhelming evidence of legislative intent in a simple attempt to justify the contrary conclusion which the Alabama court had, for unknown reasons, already reached.

C. The Alabama Legislature clearly intended that Act 434 be a local law, limited in effect to only Escambia County.

As stated, the question for review by this Court is not whether the evidence was admissible or inadmissible, but whether the Alabama Court may ignore compelling evidence, which, by the Court's own opinion, is admissible, and which was found by the Trial Court to be conclusive. This evidence, "snake oil" as the Commissioner would have it, consists of public records and documents contained in the certified history of the Bill in the Department of Archives and History and in the records of the House and Senate, viz: (1) fiscal notes signed by Committee Chairman, estimating revenue from Escambia County production, i.e., the only county with Smackover production in the interval 15,000 to 15,800 feet, and explanatory memoranda of the Alabama Fiscal Office, an arm of the Legislature, concerning the Bill's restricted field of operation to only one county, (2) Legislative Journal entries showing that the Bill was taken up out of order on the "Special Order Calendar" dealing with "uncontested local bills", (3) administrative interpretations of the Department of Revenue prior to final passage of the Bill but before the suit was filed, and (4) the uncontroverted statements of the sole sponsor of the Bill made in committee and on the floor of the Legislature.

1. *Fiscal notes and other records of the Alabama Legislative Fiscal Office.*

When Act 434 was first introduced, it was unquestionably a state-wide bill, since the so-called Smackover Depth Proviso had not been inserted into the Bill. When the representative from Escambia County amended the Bill to insert the Smackover Proviso, in order to limit the applica-

tion of the Bill to production in the sponsor's own county, the Bill then became one of local application. The metamorphosis is graphically illustrated by examination of the fiscal notes, an analysis of revenues expected from each revenue producing bill, which are physically attached to each bill as they are considered.

When the bill was first introduced, it was estimated in the fiscal note that the tax increase would produce revenues on a statewide basis in an amount of $5,400,000.00. However, when the Smackover Depth Proviso was added by amendment to the foot of the levying portion of the statute, a second fiscal note was prepared by the Alabama Legislative Fiscal Office, and the fiscal note reflected revenue of only $1,730,000.00, based on Escambia County production alone. The decrease was explained by Mr. Victor Vernon, the legislative analyst who prepared the fiscal notes, as the result of the change in the bill from a general statewide taxing measure to a taxing measure of local application.

The records of the Legislative Fiscal Office, an arm and creature of the legislature, prepared by an analyst who not only attended the committee hearings, but also discussed the matter with the sponsor and the Department of Revenue, are highly persuasive public documents and business records showing the intent of the legislative body to enact a local tax increase. The courts have routinely looked to fiscal notes as documentary proof of legislative intent. *See, e.g., Shinholster v. Graham,* 527 F.Supp. 1318 (N.D. Fla. 1981); *Municipality of Anchorage v. Sisters of Providence in Washington, Inc.,* 628 P.2d 22 (Alaska 1981); *Hood v. State,* 574 P.2d 811 (Alaska 1978); *Turner v. Collins,* 390 A.2d 537 (Me. 1978); *Wieczorek v. City of Franklin,* 82 Wis.2d 19, 260 N.W.2d 650 (1978). The fiscal notes, however, an integral part of the bill itself, were ignored by the Alabama Supreme Court.

2. *Journal Entries.*

The most highly probative evidence of the circumstances of a bill's passage is that found in the legislative journals.

The journal entries in question show that Act 434 was carried on the "Special Order Calendar" and that the House resolved that it and other similar uncontested matters "be made the special and paramount business . . . taking precedence over any other business of the House". The business which the House placed on this Special Order Calendar, along with Act 434, included "reports of standing committees, commendations, sympathy resolutions" and other "uncontested local bills".

In the past, the Alabama Supreme Court has held that the journals of the House and Senate are conclusively presumed to be correct, and that the court takes judicial notice of their contents, noting that "if it is found by us that there is any discrepancy between the published act and the House and Senate journals, such journals are referred to as conclusive proof of the form and terms of the act as passed." *State Docks Commission v. State ex rel Jones*, 227 Ala. 521, 526, 150 So. 537, 540 (1933). In fact, in *Byrd v. State ex rel Colquett*, 212 Ala. 266, 102 So. 223 (1924), the court considered the journals conclusive proof as to the sufficiency of the notice of intent to pass a local law. The court noted that "[c]ourts cannot go behind the journals of the legislature to determine whether publication was in fact made on the date shown by the proof entered on the journals." *Id.*, 212 Ala. at 271, 102 So. at 228 (on reh'g). See also, *Opinion of the Justices*, 412 So.2d 279 (Ala. 1982) ("The journal entry, by *universal rule*, must be accepted by this court . . ."). In the case at bar, however, the court disregarded its rule that "[t]he Journals import absolute verity on matters shown therein." *Byrd v. State ex rel. Colquett*, 212 Ala. at 271, 102 So. at 228.

3. *Administrative Interpretation by the Department of Revenue.*

Another source of evidence to determine the meaning of a bill is that interpretation given by administrative agencies. In this case, the Department of Revenue, the agency charged with administering the bill, viewed the bill before its passage as one of local application. The Department's

interpretation of the statute was the subject of testimony by Mr. Louis Easterly, a Department of Revenue official, and the Department's view is also exhibited by its approval of a fiscal note which anticipated revenue from Escambia County alone.

In *Broadwater v. Blue and Gray Patio Club*, 403 So.2d 209 (Ala. 1981), the Alabama Supreme Court considered the interpretation given a statute by the administrative agency charged with the responsibility of enforcing it. The court wrote: "We are obliged to give due consideration to [the agency's] interpretation of statutes it must administer." *Id.* at 213. See also, *Boswell v. Abex Corp.*, 55 Ala. App. 477, 317 So.2d 314 (1975). Certainly then, the court has recognized the probative value of administrative interpretations of statutes, and just such evidence was before the court here; nevertheless, the court ignored the probative, credible evidence before it which led to one and only one conclusion, i.e., that the bill was one of local application.

4. *Statements of the sponsor in committee and in debate on the floor.*

Here, because of the peculiar legislative institution "local courtesy", representations made by the bill's sponsor to his fellow legislators are highly probative of the meaning of a bill, once passed. *See, Federal Energy Administration v. Algonquin*, 426 U.S. 548 (1976). In fact, again because of "local courtesy", the sponsors "intent" becomes that of the legislature. Representative Hines of Escambia County testified without contradiction that he represented and presented Act 434 to the Ways and Means Committee, and on the floor of the Legislature, as one affecting only Escambia County, Alabama. In addition, he testified that the intent of the bill was to raise severance taxes in Escambia County alone, leaving the remainder of the state at its present tax level. Again, the Alabama court did not hold that such statements were inadmissible "snake oil", it simply refused to consider or address the cogent, highly persuasive and uncontested evidence.

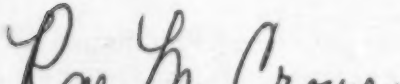
## IV.
## THE COMMISSIONER HAS NOT MEANINGFULLY RESPONDED TO OTHER ISSUES RAISED IN APPELLANTS' BRIEF

The Commissioner has not effectively responded to Appellants' arguments relating to the equal protection and impairment of contracts issues raised by this appeal. Rather than burden the Court with repetition of the arguments, Appellants stand on the reasoning and authority set forth in their initial brief.

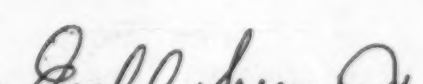
## V.
## CONCLUSION

For the foregoing reasons, and under the authorities cited, the judgment of the Alabama Supreme Court is due to be reversed.

Respectfully submitted,



RAE M. CROWE



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No. 81-1268

In The
SUPREME COURT OF THE UNITED STATES
October term, 1981

EXCHANGE OIL and GAS CORPORATION, GETTY OIL COMPANY and UNION OIL COMPANY of CALIFORNIA

Appellants,

v.

RALPH EAGERTON, JR., as Commissioner of Revenue of the State of Alabama, et al.,

Appellees,

On Appeal From the Supreme Court of the State of Alabama

## PROOF OF SERVICE

I, RAE M. CROWE, one of the attorneys for Exchange Oil and Gas Corporation, Getty Oil Company, and Union Oil Company of California, appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 11th day of February 1983, I served copies of the foregoing Reply Brief on all parties required to be served, as follows:

1. On appellee herein, Ralph P. Eagerton, Jr., as Commissioner of Revenue of the State of Alabama, by depositing a copy in a United States Post Office, with first class postage prepaid, addressed to John J. Breckenridge,Esq., his counsel of record, at 201 Administrative Building, Montgomery, Alabama 36130.

2. On all other parties to the proceeding below, by depositing copies in a United States post office, with first class postage prepaid, addressed to their respective attorneys of record as follows:

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3. On Amici United States of America and The Federal Regulatory Commission as follows:

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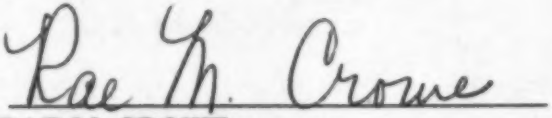

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# APPENDIX 1

## THE STATE OF ALABAMA

## JUDICIAL DEPARTMENT

## THE SUPREME COURT OF ALABAMA

## OCTOBER TERM, 1982-83

**Ralph P. Eagerton, Jr.**
**as Commissioner of Revenue**
**of the State of Alabama**

**v.**

**81-128**

**Terra Resources, Inc., et. al.**

**Appeal from Montgomery Circuit Court**

ALMON, JUSTICE.

This appeal necessitates further interpretation of the oil and gas severance tax statute which was the subject of *Eagerton v. Exchange Oil and Gas Corporation,* 404 So. 2d 1 (Ala. 1981). The question is whether an exception in the statute swallows the rule as to gas producers. We hold that it does not, and reverse.

Terra Resources, Inc. (Terra), Petroleum Corporation of Texas (PETCO), and other companies filed suit to recover oil and gas severence taxes paid under protest. After a remand by this Court,[1] the circuit court ordered a refund of substantial amounts of the tax paid on gas production. Ralph P. Eagerton, Jr., as Commissioner of Revenue of the State of Alabama (the Commissioner), appealed. The above

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[1] *Eagerton v. Exchange Oil & Gas Corp.*, 404 So. 2d 1 (Ala. 1981); various oil producing companies have also appealed after remand of the action.

named companies filed briefs as appellees;[2] we shall refer to them as the gas producers.

In 1979 the Alabama Legislature passed an Act, "To amend Code of 1975, Sections 40-20-2 and 40-20-8, so as *to increase the rate of tax;* to provide further for distribution of the proceeds of the tax; and to provide certain exemptions from the increased rate." 1979 Ala. Acts No. 79-434, p. 687 (emphasis added).[3] Prior to this act, the title of § 40-20-2 was "Levy and *amount of tax upon* business of producing or *severing* oil or *gas* from soil, etc., generally." (Emphasis added.) Nevertheless, the gas-producing appellees argue that the "increase" enacted in Act No. 79-434 of the tax upon the business of producing oil or gas only applies to gas production if a *gas* well produces 26 barrels or more of *oil* per day.

In other words, Act. No. 79-434 raised the four percent (4%) previously found in § 40-20-2 to six percent (6%). One of the exemptions mentioned in the title as set out above reads, "All wells producing less than 26 barrels of oil per day shall be taxed at the rate of four per centum (4%) of the gross value of said oil or gas at the point of production."[4] The gas producers herein contend that because this sentence refers to "all wells," not "all oil wells," and to "said oil or gas," it exempts from the two percent increase of the statute gas produced at wells which do not also produce the stated amount of oil.

This Court, in *Eagerton, supra,* "agree(d) that the exemption in the Act refers to all wells producing either oil or gas." 404 So. 2d at 8. No analysis accompanied this

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[2] Three other gas companies who were parties below adopted the position of the above-named appellees and all five filed motions to dismiss the appeal. In view of our decision on the merits, these motions are denied.

[3] The legislature amended this code section again in 1980, but that act is not at issue here. Acts of Alabama 1980, Act No. 80-708.

[4] Act No. 80-708 (see note 3) contains an identically worded exemption for wells producing less than 40 barrels of oil per day.

remark, however, and the weight of the holding on this point rested elsewhere: "Since the trial court recognizes that one or two of the plaintiffs' wells do produce more than 26 barrels of oil, it was improper to hold that Act No. 79-434 did not apply to those plaintiffs." *Id.* Before we follow the above virtually obiter dictum agreement with the gas producers' position, therefore, we feel obliged to examine the matter more closely.

That the statute as a whole proposes to increase the tax on gas as well as oil can be gleaned not only from the short titles set out above, but also from other language in the statute. For instance, the sentence immediately preceding the twenty-six barrel exemption reads, "The amount of such tax shall be measured at the rate of six per centum of the gross value of said oil or gas at the point of production." It does not seem reasonable that a tax increase levied in one sentence should be effectively negated by an obscure reference in the following sentence. Statutes are to be construed as a whole and the parts thereof harmonized if possible. *Darks Dairy, Inc. v. Alabama Dairy Commission,* 367 So. 2d 1378 (Ala. 1979); *In re Ashworth,* 291 Ala. 723, 287 So. 2d 843 (1974), *Lee Optical Co. of Alabama v. State Bd. of Optometry,* 288 Ala. 338, 261 So. 2d 17 (1972).

Exemptions from taxation are to be strictly construed against the exemption and in favor of the right to tax, and the burden is on one seeking an exemption to clearly establish the right. *Community Action Agency of Huntsville v. State,* 406 So. 2d 890 (Ala. 1981); *Title Guarantee Loan & Trust Co. v. Hamilton,* 238 Ala. 602, 193 So. 107 (1940); *Brundidge Milling Co. v. State,* 45 Ala. App. 208, 228 So. 2d 475 (1969). To be sure, there is a countervailing rule of construction that taxing statutes are to be construed strictly in favor of the taxpayer and against the taxing authority. *State v. Hall,* 278 Ala. 359, 178 So. 2d 518 (1965); *Gottlieb v. City of Birmingham,* 243 Ala. 579, 11 So. 2d 363 (1943). We regard the exemption rule as more specific, however, and more directly pertinent to this case.

Furthermore, we give favorable consideration to the Commissioner's interpretation because he administers the statute and has expertise on the subject. This rule of construction applies only where the statute is of doubtful meaning - which is emphatically the case with this provision - and only to aid the court in determining legislative intent - which is also unclear here. The Commissioner's interpretation is not binding on the Court, but is persuasive. *See, Broadwater v. Blue & Gray Patio Club,* 403 So. 2d 209 (Ala. 1981); *Hulcher v. Taunton,* 388 So. 2d 1203 (Ala. 1980); *Employee's Retirement System of Alabama v. Oden,* 369 So. 2d 4 (Ala. 1979); *Mooody v. Ingram,* 361 So.2d 513 (Ala. 1978); *Alabama Public Commission v. Continental Tennessee Lines,* 284 Ala. 27, 221 So. 2d 385 (1969); *Buchanan v. State,* 274 Ala. 592, 150 So. 2d 200 (1962); *Glencoe Paving Co. v. Graves,* 266 Ala. 154, 94 So. 2d 872 (1957); *Dixie Coaches, Inc. v. Ramsden,* 238 Ala. 285, 190 So. 2d (1939).

The Commissioner refers to the sentence in question as the "stripper well exemption." He states that courts recognize the term "stripper wells" as referring to marginally productive wells, generally defined as producing less than 10 barrels of oil or a proportionate number of cubic feet of gas per day. *See, e.g., In re Dept. of Energy Stripper Well Exemption,* 520 F. Supp. 1232 (D. Kan. 1981).

The Commissioner claims that by limiting the exemption to wells producing less than 26 barrels of oil per day, the legislature has provided an exemption for oil stripper wells. He contends that the words *"or gas" in the sentence are mere surplusage, included here only in a formulaic repetition of the words "oil and gas" or "oil or gas" throughout the Act.* This reasoning leaves gas stripper wells out of the coverage of the exemption, but the burden is on the gas producers to prove that they come within the terms of the exemption anyway. The Commissioner points out that an equivalence between oil volume and gas volume can be computed by converting both to BTU's (one barrel of oil being roughly equivalent to 6,000 cubic feet of gas), and seems to suggest that this method could provide a definition

for gas stripper wells under the statute. This question is not properly presented for review, so we decline to rule on it. We do feel that the presumption against exemption would create a hurdle for the gas producers in seeking such an interpretation.

The gas producers argue that both the legislative history and a literal reading of the statute prove that the legislature did not intend to limit the exemption to oil wells. We do not agree.

The gas producers called Mr. Louis G. Green, the director of the Legislative Reference Service, to testify concerning drafts of the bill which became Act 79-434. Mr. Green's office helped Representative Hines prepare the bill. Two of the drafts in Mr. Green's file began the exemption in question with the words "all oil wells" instead of "all wells." The gas producers assert that because the final bill did not say "All oil wells," gas wells which do not produce 26 barrels of oil per day are exempt from the increase levied by Act No. 79-434.

This is clearly irrelevant evidence. Without any proof that the drafts beginning with "all oil wells" were ever introduced in the legislature, these documents are no indication of the legislative intent. Nor is the fact that Mr. Hines introduced a version without the word "oil" included evidence of legislative intent. The motives or reasons of an individual legislator are not relevant to the intent of the full legislature in passing the bill. *James v. Todd*, 267 Ala. 495, 103 So. 2d 19 (1957).

Although there is some logic to the gas producers' reading – that *any* well which produces less than 26 barrels of oil per day shall be taxed at four percent of the value of all oil *and gas* from the well – we find it implausible that the legislature would enact a statute to increase the severance tax on oil and gas and then obliquely exempt *all gas* from the increase *except* for gas *which happens to come from wells which also produce substantial quantities of oil.* Such a broad exemption should be clearly set out if such is the

legislative intent. *Nearly all of the gas producers' wells would be exempt if we were to accept their reading of the statute.* We do not find that they have met their burden of proving that they come within the exemption.

The statement by this Court that the exemption refers to all wells producing either oil or gas was made in conclusory terms after a long discussion of other complicated issues. After fuller consideration, we disagree with the position urged by the gas producers and hold that the "26 barrels of oil" exemption does *not* serve to exempt *virtually all gas production in the state* from the increase levied by the statute.

The judgement is reversed and the cause remanded for further proceedi[illegible]s not inconsistent with this opinion.

REVERSED AND REMANDED.

All the Justices concur.

# Docket Sheet

| NO. 81-1268-ASX (Vide: 81-1020) | TITLE | Exchange Oil and Gas Corporation, et al., Appellants v. Ralph P. Eagerton, Jr., Commissioner of Revenue of the State of Alabama |
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| DOCKETED | COURT |
|---|---|
| Jan. 7, 1982 | Supreme Court of Alabama |

| DATE | PROCEEDINGS AND ORDERS |
|---|---|
| | Counsel for Appellants: Rae M. Crowe |
| | Counsel for Appellee: Macbeth Wagnon, Jr., Louis E. Braswell, John J. Breckenridge |
| Nov. 25, 1981 | Application for an extension of time to docket an appeal and order granting same until January 8, 1982 by White, J, on Nov. 27, 1981. |
| Jan. 7, 1982 | Statement as to jurisdiction filed.(Record filed). |
| Jan. 7, 1982 | Appendix filed. |
| Feb. 5, 1982 | Motion to dismiss filed. |
| Feb. 10, 1982 | DISTRIBUTED. 2-26. |
| Feb. 17, 1982 | Reply brief for the appellants filed. (D). |
| Mar. 1, 1982 | The Solicitor General is invited to file briefs in these cases expressing the views of the United States. |
| Apr. 22, 1982 | Brief for the United States and The Federal Energy Regulatory Commission as amici curiae filed. (Vide: 81-1020). |
| Apr. 28, 1982 | DISTRIBUTED. 5-13. |
| May 17, 1982 | Probable jurisdiction NOTED. The case is consolidated with No. 81-1020 and a total of one hour is allotted for oral argument. |
| | --- |
| June 15, 1982 | Order extending time to file the appellants' brief on the merits until Aug. 30, 1982. |
| July 1, 1982 | Joint appendix filed. (Vide: 81-1020). |
| Aug. 28, 1982 | Brief for the appellants filed. |
| Sept. 1, 1982 | Brief for the U. S. and FERC as amici curiae filed. (Vide: 81-1268). |
| Sept. 13, 1982 | Motion of appellants for divided argument and for additional time for oral argument filed. (Also in 81-1268). |
| Sept. 24, 1982 | Order extending time to file the appellees' brief on the merits until Nov. 29, 1982. |
| Oct. 4, 1982 | The motion of appellants for divided argument is GRANTED. The request for additional time for oral argument is DENIED. |
| Nov. 26, 1982 | Brief of appellee filed. (Vide: 81-1020). |
| Dec. | |

(OVER)

81-1268

*Title*

No.

| DATE | PROCEEDINGS AND ORDERS |
|---|---|
| Dec. 14, 1982 | CIRCULATED. |
| Feb. 14, 1983 | Reply brief for the appellants filed. (D). |
| Feb. 15, 1983 | Supplemental brief of the appellee filed. (D). (Vide: 81-1020). |
| Feb. 22, 1982 | ARGUED. |